

1 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
2 EASTERN DIVISION
3 IN RE: NATIONAL) MDL No. 2804
PRESCRIPTION OPIATE)
4 LITIGATION) Case No.
1:17-MD-2804
5)
THIS DOCUMENT RELATES TO) Hon. Dan A. Polster
6 ALL CASES)
)

7
8
9
10 Friday, January 25, 2019
11

12 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW
13
14
15

16 Videotaped Deposition of EUGENE G.
CAVACINI, held at Winstead PC, 2728 North
17 Harwood, Suite 500, Dallas, Texas, commencing
at 9:01 a.m., on the above date, before
18 Michael E. Miller, Fellow of the Academy of
Professional Reporters, Registered Diplomate
19 Reporter, Certified Realtime Reporter and
Notary Public.
20
21
22

23
24 GOLKOW LITIGATION SERVICES
877.370.3377 ph | fax 917.591.5672
25 deps@golkow.com

1 A P P E A R A N C E S:

2 LEVIN PAPANTONIO THOMAS MITCHELL
3 RAFFERTY & PROCTOR PA

4 BY: BRANDON L. BOGLE, ESQUIRE
5 bbogle@levinlaw.com

6 316 South Baylen Street
7 Suite 600
8 Pensacola, Florida 32502-5996
9 (850) 435-7000

10 Counsel for MDL Plaintiffs

11 COVINGTON & BURLING LLP

12 BY: EMILY JOHNSON HENN, ESQUIRE
13 ehenn@cov.com

14 3000 El Camino Real
15 5 Palo Alto Square
16 10th Floor
17 Palo Alto, California 94306-2112
18 (650) 632-4715

19 Counsel for McKesson Corporation and
20 The Witness

21 COVINGTON & BURLING LLP

22 BY: MARINA F. DALIA-HUNT, ESQUIRE
23 mdaliahunt@cov.com

24 3000 El Camino Real
25 10th Floor
26 Palo Alto, California 94306-2112
27 (650) 632-4700

28 Counsel for McKesson Corporation and
29 The Witness

30 JONES DAY

31 BY: RICHARD M. BRODSKY, ESQUIRE
32 rbrodsky@jonesday.com

33 150 West Jefferson Avenue
34 Suite 2100
35 Detroit, Michigan 48226
36 (313) 733-3939
37 Counsel for Walmart Corporation

1 A P P E A R A N C E S:

2 REED SMITH LLP

3 BY: MARY M. BALASTER, ESQUIRE

4 mbalaster@reedsmith.com

5 811 Main Street

6 Suite 1700

7 Houston, Texas 77002-6110

8 (713) 469-3842

9 Counsel for AmerisourceBergen

10

11 BAKER HOSTETLER LLP

12 BY: MATTHEW RALEY, ESQUIRE

13 mraley@bakerlaw.com

14 811 Main Street

15 Suite 1100

16 Houston, Texas 77002

17 (713) 646-1392

18 Counsel for Cardinal Health

19

20 MARCUS & SHAPIRA LLP

21 BY: SCOTT D. LIVINGSTON, ESQUIRE

22 livingston@marcus-shapira.com

23 One Oxford Center

24 35th Floor

25 Pittsburgh, Pennsylvania 15219

 (412) 471-3490

 Counsel for HBC Services

 ARNOLD & PORTER KAYE SCHOLER LLP

 BY: KAREN RIGBERG, ESQUIRE

 (via teleconference)

 777 South Figueroa Street

 Los Angeles, California 90017-5844

 Counsel for Endo Health Solutions

 Inc., Endo Pharmaceuticals Inc., Par

 Pharmaceutical, Inc. and Par

 Pharmaceutical Companies, Inc.

1 A P P E A R A N C E S:

2 ALLEGAERT BERGER & VOGEL LLP

BY: LAUREN J. PINCUS, ESQUIRE

3 lpincus@abv.com

(via teleconference)

4 111 Broadway

20th Floor

5 New York, New York 10006

(212) 571-0550

6 Counsel for Rochester Drug

Cooperative Inc.

7

8 COLLINSON DAEHNKE INLOW & GRECO

BY: AMANDA E. ROSENTHAL, ESQUIRE

9 amanda.rosenthal@cdiglaw.com

(via teleconference)

10 2110 East Flamingo Road

Suite 305

11 Las Vegas, Nevada 89119

(702) 979-2132

12 Counsel for C&R Pharmacy

13

14 ALSO PRESENT:

15 SANDRA ZAMORA, ESQUIRE

McKesson Corporation

16

17 VIDEOGRAPHER/TRIAL TECHNICIAN:

18 RICHARD RIENSTRA,

Golkow Litigation Services

19

20

21

22

23

24

25

1	INDEX	
2		
3	APPEARANCES	2
4		
5	PROCEEDINGS	10
6		
7	EXAMINATION OF EUGENE G. CAVACINI:	
8		
9	BY MR. BOGLE	12
10		
11	BY MS. HENN	353
12		
13	BY MR. BOGLE	364
14		
15	CERTIFICATE	370
16		
17	ERRATA	372
18		
19	ACKNOWLEDGMENT OF DEPONENT	372
20		
21	LAWYER'S NOTES	374
22		
23		
24		
25		

1	DEPOSITION EXHIBITS		
	EUGENE G. CAVACINI		
2	January 25, 2019		
3	MCKESSON-CAVACINI EXHIBITS		PAGE
4	Exhibit 1	P1.2131	15
		Gene Cavacini Résumé	
5		[No Bates]	
6	Exhibit 2	P1.1464	46
		9/27/06 DEA Letter	
7		MCKMDL00478906 -	
		MCKMDL00478909	
8			
	Exhibit 3	P1.1704	68
9		E-mail(s)	
		MCKMDL00498228 -	
10		MCKMDL00498230	
11	Exhibit 4	P1.889	72
		Settlement and Release	
12		Agreement and	
		Administrative Memorandum	
13		of Agreement	
		MCKMDL00337001 -	
14		MCKMDL00337024	
15	Exhibit 5	P1.2141	88
		E-mail(s) w/Attachment(s)	
16		MCKMDL00543554 -	
		MCKMDL00543561	
17			
	Exhibit 6	P1.574	107
18		McKesson Operations Manual	
		MCKMDL00000021 -	
19		MCKMDL00000046	
20	Exhibit 7	P1.2140	127
		E-mail(s) w/Attachment(s)	
21		MCKMDL00642352 -	
		MCKMDL00642363	
22			
	Exhibit 8	P1.2139	142
23		E-mail(s) w/Attachment(s)	
		MCKMDL00642364 -	
24		MCKMDL00642382	
25			

1	MCKESSON-CAVACINI EXHIBITS	PAGE
2		
3	Exhibit 9 P1.1524	152
4	E-mail(s) w/Attachment(s)	
5	MCKMDL00484482 -	
6	MCKMDL00484511	
7	Exhibit 10 P1.1514	165
8	FY13 Retail Sales Incentive	
9	Compensation Plan	
10	Communication	
11	MCKMDL00335804 -	
12	MCKMDL00335816	
13	Exhibit 11 P1.1515	177
14	FY14 Retail Sales	
15	Compensation Plans	
16	MCKMDL00335830 -	
17	MCKMDL00335854	
18	Exhibit 12 P1.2133	182
19	E-mail(s)	
20	MCKMDL00489792 -	
21	MCKMDL00489793	
22	Exhibit 13 P1.2132	188
23	E-mail(s) w/Attachment(s)	
24	MCKMDL00495641	
25	Exhibit 14 P1.2114	195
26	McKesson OneStop Generics	
27	Newsletter	
28	MCKMDL00642308 -	
29	MCKMDL00642313	
30	Exhibit 15 P1.1900	207
31	E-mail(s)	
32	MCKMDL00489869 -	
33	MCKMDL00489871	
34	Exhibit 16 P1.1842	214
35	E-mail(s)	
36	MCKMDL00495740 -	
37	MCKMDL00495741	

1	MCKESSON-CAVACINI EXHIBITS	PAGE
2		
3	Exhibit 17 P1.1843	224
4	E-mail(s)	
5	MCKMDL00492040 -	
6	MCKMDL00492041	
7	Exhibit 18 P1.1905	228
8	11/2/18 DOJ Press Release	
9	[No Bates]	
10	Exhibit 19 P1.1904	232
11	Indictment, USA v. Martella	
12	[No Bates]	
13	Exhibit 20 P1.1902	235
14	McKesson's CSMP Regulatory	
15	Investigative Report	
16	MCKMDL00340046 -	
17	MCKMDL00340050	
18	Exhibit 21 P1.2137	239
19	E-mail(s)	
20	MCKMDL00695128 -	
21	MCKMDL00695132	
22	Exhibit 22 P1.2060	253
23	12/19/18 Energy & Commerce	
24	Committee Report	
25	[No Bates]	
26	Exhibit 23 McKesson Shipments of	258
27	Opioid Drugs in U.S.,	
28	2006-2014	
29	[No Bates]	
30	Exhibit 24 P1.434	269
31	5/3/16 Forbes Article	
32	[No Bates]	
33	Exhibit 25 P1.1453	273
34	3/14/17 The Canton	
35	Repository Article	
36	[No Bates]	
37		
38		
39		
40		
41		
42		
43		
44		
45		

1	MCKESSON-CAVACINI EXHIBITS	PAGE
2		
3	Exhibit 26 McKesson Shipments of	276
4	Opioid Drugs in Ohio,	
5	2006-2014	
6	[No Bates]	
7		
8	Exhibit 27 P1.851	288
9	Boggs Presentation, State	
10	of Prescription Drug Abuse	
11	MCKMDL00336833 -	
12	MCKMDL00336886	
13		
14	Exhibit 28 P1.44	294
15	2/15/18 Energy & Commerce	
16	Committee Letter	
17	[No Bates]	
18		
19	Exhibit 29 P1.88	334
20	Administrative Memorandum	
21	of Agreement	
22	MCKMDL00355350 -	
23	MCKMDL00355363	
24		
25	Exhibit 30 P1.2136	366
26	5/31/18 Letter Re: Cavacini	
27	Compensation	
28	MCKMDL00695848 -	
29	MCKMDL00695849	
30		
31		
32		
33		
34		
35		
36		
37		
38		
39		
40		
41		
42		
43		
44		
45		
46		
47		
48		
49		
50		
51		
52		
53		
54		
55		
56		
57		
58		
59		
60		
61		
62		
63		
64		
65		
66		
67		
68		
69		
70		
71		
72		
73		
74		
75		
76		
77		
78		
79		
80		
81		
82		
83		
84		
85		
86		
87		
88		
89		
90		
91		
92		
93		
94		
95		
96		
97		
98		
99		
100		

1 PROCEEDINGS

2 (January 25, 2019 at 9:01 a.m.)

3 THE VIDEOGRAPHER: We are now
4 on the record. Today's date is
5 January 25th, 2019, and the time is
6 approximately 9:01 a.m.

7 This video deposition is being
8 held in Dallas, Texas in the matter of
9 In re National Prescription Opiate
10 Litigation, Case No. 1:17-MD-2804.

11 The deponent today is Mr. Gene
12 Cavacini.

13 The court reporter is Mr. Mike
14 Miller.

15 Would counsel like to identify
16 yourselves for the record, starting
17 with counsel on the telephone, please.

18 THE REPORTER: Counsel on the
19 phone, please identify.

20 MS. PINCUS: Lauren Pincus from
21 Allegaert Berger & Vogel, on behalf of
22 Rochester Drug Cooperative Inc.

23 MS. RIGBERG: Karen Rigberg
24 with Arnold & Porter in Los Angeles
25 for the Endo and Par defendants.

1 MS. ROSENTHAL: Amanda
2 Rosenthal from Collinson Daehnke
3 Inlow & Greco for C&R Pharmacy.

4 (Telephone interruption.)

5 MS. HENN: Any other counsel on
6 the phone?

7 MR. BOGLE: Brandon Bogle on
8 behalf of the MDL plaintiffs.

9 MR. RALEY: Matt Raley with
10 BakerHostetler on behalf of Cardinal
11 Health.

12 MS. ZAMORA: Sandra Zamora,
13 McKesson in-house legal.

14 MR. LIVINGSTON: Scott
15 Livingston on behalf of HBC.

16 MS. BALASTER: Mary Balaster
17 with Reed Smith on behalf of
18 AmerisourceBergen Drug Corporation.

19 MR. BRODSKY: Richard Brodsky
20 from Jones Day on behalf of Walmart.

21 MS. DALIA-HUNT: Marina
22 Dalia-Hunt from Covington for McKesson
23 and the witness.

24 MS. HENN: Emily Henn from
25 Covington & Burling on behalf of

1 McKesson and the witness.

2 THE VIDEOGRAPHER: Would the
3 court reporter please swear in the
4 witness.

5 (Witness sworn by the
6 reporter.)

7 EUGENE G. CAVACINI,
8 having been duly sworn,
9 testified as follows:

10 EXAMINATION

11 BY MR. BOGLE:

12 Q. Good morning.

13 A. Good morning.

14 Q. Can I get your full name,
15 please?

16 A. Eugene Gregory Cavacini.

17 Q. And I understand you've been
18 deposed once during your lifetime; is that
19 right?

20 A. Yes, correct.

21 Q. And that was about a little
22 less than a year ago. Does that sound right?

23 A. I believe it was last May.

24 Q. Okay. Just to kind of reorient
25 you to the basics of a deposition, my name is

1 Brandon Bogle. I'm going to be asking you
2 some questions today. I'll do my best when
3 I'm asking you questions to let you finish
4 your answer before I get to my next question.

5 I would ask sort of the same
6 from you, meaning wait until I finish my
7 question before you answer. It makes the
8 record a little clearer and, quite frankly,
9 it makes sure you understand what I'm asking
10 you. Is that fair?

11 A. Yes, thank you.

12 Q. And if you need a break at any
13 point in time in the deposition, just let me
14 or your counsel know. We have no problem
15 doing that. It's not an endurance contest in
16 that regard. Okay?

17 A. Thank you.

18 Q. And the last thing is, if I ask
19 you a question that you don't hear or don't
20 understand, please ask me to repeat or
21 rephrase and I will do my best to do so.
22 Otherwise, I will assume you understand or
23 heard my question. Is that fair?

24 A. It is.

25 Q. Okay. You are currently

1 employed with McKesson; is that right?

2 A. Correct.

3 Q. Okay. And you've been there
4 since 2002; is that right?

5 A. Correct.

6 Q. Okay. And I just want to run
7 through the positions you've held since 2002,
8 make sure I'm understanding correctly.

9 I understand that from 2002
10 through 2005 you worked as a sales executive
11 at McKesson. Does that sound right?

12 A. It does. I thought I was in
13 that role a little bit longer, but could be.

14 Q. Okay. Let's do this maybe to
15 make it a little smoother.

16 You have a LinkedIn page
17 online; is that correct?

18 A. I probably do, yes.

19 Q. Do you recall ever drafting
20 one?

21 A. Yes. I don't currently manage
22 it, but --

23 Q. All right. Let's take a look
24 at that and I just want to walk through again
25 some of your roles at McKesson over time.

1 A. Yep.

2 Q. I'm going to hand you what's
3 marked as Exhibit 1 to your deposition, which
4 is also 1.2131. This is a public document,
5 so no Bates stamp.

6 (McKesson-Cavacini Deposition
7 Exhibit 1 marked.)

8 BY MR. BOGLE:

9 Q. Okay. Mr. Cavacini, you see at
10 the top here there's your name; is that
11 right?

12 A. Correct.

13 Q. Okay. Just looking at this,
14 and it's just one page, does this seem to
15 correspond with what you understand to be
16 your LinkedIn page?

17 A. It does.

18 Q. Okay.

19 A. Yes.

20 Q. Okay. And so, for example, if
21 we walk through going from bottom to top,
22 it's noted to be a sales executive from
23 January 2002 through November 2005.

24 Does that seem accurate to you?

25 A. It does.

1 Q. Okay. And what were your job
2 functions generally as a sales executive at
3 McKesson?

4 A. I was a sales executive for our
5 retail independent business, and I described
6 that role as a business development role. I
7 was tasked with targeting non-McKesson
8 customers and trying to identify if there was
9 a fit for them to become McKesson customers.

10 Q. So trying to bring in new
11 business; is that fair?

12 A. Yes.

13 Q. Okay. And was there a specific
14 geographic region you focused on during that
15 time period in that job?

16 A. There was. I was responsible
17 for the markets serviced by our Delran
18 distribution center, which would have been
19 primarily eastern Pennsylvania, the state of
20 New Jersey, a little bit of Maryland and
21 Delaware, and the boroughs of New York City.

22 During the course of my tenure
23 in that role, I also had some
24 responsibilities for our New Castle markets
25 that would have been western Pennsylvania,

1 pieces of eastern Ohio, the northwest corner
2 of West Virginia.

3 Q. Okay. In your responsibility
4 for the New Castle market, did that cover the
5 entire three and a half years that you had
6 that role?

7 A. No. I started primarily in the
8 Delran market and then over time expanded
9 into the New Castle market.

10 Q. So in that, again, sort of
11 three-and-a-half-year time period, do you
12 have a recollection as to how much time you
13 spent sort of trying to get new business in
14 the New Castle market?

15 A. I would say the primary focus
16 was in the New York City area. That's where
17 most of our opportunity was. As far as time,
18 I don't recall when exactly I got
19 responsibility for the New Castle market. I
20 was living outside of Philadelphia and
21 focusing most of my time in the Delran
22 market.

23 Q. Okay. And going back to your
24 LinkedIn page, the next job that's listed
25 there is a district sales manager from

1 November 2005 to March 2009.

2 Does that time frame and that
3 job title sound accurate to you?

4 A. It does seem accurate, yes.

5 Q. Okay. And so as district sales
6 manager, let's start again: What were your
7 general tasks in that position?

8 A. I've described that role as a
9 front line sales manager role. I led a team
10 of retail sales managers whose primary
11 responsibilities were the management of
12 existing McKesson accounts, taking care of
13 our relationship, making sure that we were
14 providing good service and working with those
15 accounts to sell our value proposition and
16 services.

17 Q. Approximately how many people
18 did you supervise during that time period?

19 A. It did move from time to time,
20 based on the market needs, and again, my
21 responsibilities, but I would say on average
22 ten, you know, maybe a max of 15.

23 Q. Okay. And was there a specific
24 geographic region you covered in that
25 position?

1 A. It was similar to the sales
2 executive role. Started with the Delran
3 distribution center, so which would have been
4 that eastern Pennsylvania, New Jersey
5 New York markets.

6 During that tenure, I also had
7 responsibility for the New Castle markets,
8 which came later.

9 Q. Okay. You say it came later.
10 Do you recall the specific time period that
11 the New Castle responsibilities came?

12 A. I don't remember exactly when
13 they expanded the responsibilities to cover
14 New Castle. There was another sales manager
15 that retired, I believe, and they gave me
16 that territory at that time.

17 Q. Okay. What was the sales
18 manager's name that retired?

19 A. Jim Gavatorta.

20 Q. Then looking at your LinkedIn
21 page, you're noted to be vice president of
22 sales, March 2009 to January 2012. So again,
23 does that job title and time period seem
24 accurate to you?

25 A. It does, yes.

1 Q. And again, any specific
2 geographic region you have responsibility for
3 with that position?

4 A. It was the same markets as the
5 district sales manager; had responsibility
6 for the Delran distribution center and the
7 New Castle distribution center.

8 Q. Okay. Did you take on any new
9 geographic responsibilities or did it remain
10 those two distribution centers during that
11 roughly three-year period of time?

12 A. It was those two distribution
13 centers.

14 Q. Okay. And can you give me a
15 high-level description of your job
16 responsibilities with that position?

17 A. I would say it was very similar
18 to the district sales manager role, leading a
19 team of retail sales managers responsible for
20 the maintenance and growth of existing
21 McKesson accounts, very similar job.

22 Q. Okay. Did you take on a larger
23 group of people that you supervised with that
24 position versus the district sales manager
25 position?

1 A. No. We were experiencing some
2 growth in the New York City market and we had
3 added people over time. My recollection is
4 we had kind of restructured the organization
5 at that time. We created a new role called a
6 general manager role and retitled the
7 organization.

8 I ended up hiring a district
9 sales manager under me to cover the Eastern
10 parts of the market and was given the title
11 of vice president of sales.

12 Q. Okay. What was the name of the
13 district sales manager you hired that you
14 referenced there?

15 A. I'm trying to think. I
16 remember it being Sam Ha.

17 Q. And then moving up your
18 LinkedIn page, you're noted to be vice
19 president/general manager from January 2012
20 to March 2015.

21 Again, does that job title and
22 that time period seem accurate to you?

23 A. It does, yes.

24 Q. Okay. And it looks like you
25 moved locations there to Memphis so what

1 geographic region were you responsible for
2 with that position? Was it different?

3 A. It was, yes.

4 Q. Okay.

5 A. My family and I physically
6 moved to a suburb of Memphis and I was
7 responsible for the Memphis DC, the
8 distribution center that serviced the markets
9 of eastern Tennessee, Arkansas, Mississippi,
10 a little bit of Louisiana, a little bit of
11 Missouri.

12 And again, just for
13 clarification, went to that role with simple
14 responsibility for the Memphis DC. Into my
15 tenure I also assumed responsibility for our
16 Oklahoma City distribution center, which
17 would have serviced the markets of Oklahoma
18 and Texas, a little bit of Kansas.

19 Q. Do you know when you got -- and
20 a rough time frame is fine -- when you got
21 the responsibilities that were added in
22 Oklahoma City?

23 A. I think roughly a year into my
24 tenure, so I would say 2013, but...

25 Q. Okay. Yeah, an approximation

1 is fine.

2 A. Thank you.

3 Q. All right. Let's go -- moving
4 up the LinkedIn page, you're listed next as a
5 senior vice president - NER, from April 2015
6 to August 2017.

7 Do you see that there?

8 A. I do, yes.

9 Q. Okay. Does that position in
10 that time period -- is that accurate --

11 A. Yes.

12 Q. -- based on your recollection?

13 A. Yes.

14 Q. Okay. And NER, is that
15 northeast region?

16 A. It is, yes.

17 Q. Okay. And as the senior vice
18 president, again, can you give me a
19 high-level understanding of what you did in
20 that position?

21 A. I had full operating
22 responsibility for our distribution centers
23 that serviced our northeast region as well as
24 revenue or sales responsibility for our
25 retail independent business and our hospital

1 business in those markets.

2 Q. Okay. What geographic area did
3 the northeast region cover in that time
4 frame?

5 A. Approximately Virginia to Maine
6 and west to Ohio, the eastern parts of Ohio.
7 A little bit of North Carolina.

8 Q. And when you say Virginia to
9 Maine, you're talking south to north,
10 basically straight up the Eastern seaboard?

11 A. Straight up the Eastern
12 seaboard, south to north, and then west to
13 the eastern parts of Ohio.

14 Q. Did your territory at that
15 point in time include any portions of West
16 Virginia?

17 A. It would have. Our
18 distribution center in Virginia and our
19 distribution -- our New Castle distribution
20 center serviced parts of West Virginia.

21 Q. Okay. All right. Now, moving
22 up to the last position you have noticed --
23 noted here is SVP/COO McKesson, U.S. Pharma.
24 It says August 17th to present.

25 Do you see that?

1 A. I do.

2 Q. Okay. Now, just so the
3 acronyms are clear, SVP, would that be senior
4 vice president?

5 A. Senior vice president.

6 Q. COO is chief operating officer?

7 A. Correct.

8 Q. Okay. For McKesson U.S.
9 Pharma. Are you still holding that position?

10 A. I am, yes.

11 Q. Okay. And does that seem
12 accurate as far as the time frame that you
13 took that role over?

14 A. I do. There was some overlap
15 with my predecessor. He left the
16 organization in July, so I assumed.

17 Q. Who was your predecessor?

18 A. Frank Starn.

19 Q. Okay. So as COO and senior
20 vice president, can you give me again a
21 high-level understanding of what your role is
22 in those positions?

23 A. Absolutely. So I'm responsible
24 for our distribution network, our 26 what we
25 refer to as forward DCs that pick, pack and

1 ship the orders for our hospital as well as
2 our pharmacy customers.

3 I lead the organizations that
4 provide our customer service and customer
5 care teams as well as our sales
6 effectiveness, and I have sales or revenue
7 responsibility for our retail independent
8 business, our hospital business and our
9 government business.

10 Q. Okay. Approximately how many
11 people report to you at McKesson as a COO?

12 A. I believe approximately 6,000.
13 The majority of those are our hourly
14 associates that work in the distribution
15 centers.

16 Q. Okay. And department-wise,
17 which departments at McKesson report up
18 through you?

19 A. I mean, functions, I've got
20 customer care, sales effectiveness, our
21 contracting teams, our distribution ops teams
22 that lead the distribution center operations,
23 our retail sales teams for independent
24 customers, our hospital sales teams that call
25 on our hospital partners.

1 I have a few of our -- what I
2 would call our strategic business units, our
3 masters, which is a generics business, our
4 blood and plasma business that services our
5 hospital channels with specialty products.

6 And I have our responsibility
7 for our packaging business in Memphis,
8 compliance packaging for manufacturers.

9 Q. Okay. Does the regulatory
10 affairs department or anyone in the
11 regulatory affairs department report up to
12 you as COO?

13 A. They do not.

14 Q. Who do they report up to?

15 A. Currently it would be the
16 president of our business unit. That would
17 be --

18 Q. Who is that?

19 A. Brian Tyler is our interim
20 president.

21 Q. You said Tyler?

22 A. Tyler.

23 Q. Okay. And as COO, would I
24 understand correctly that you serve on the
25 board of directors as well?

1 A. I do not.

2 Q. You do not. Okay.

3 And as far as the hierarchy at
4 McKesson, approximately how many people are
5 higher up in the organizational structure
6 than the COO position at McKesson,
7 U.S. Pharma-wise? Let's focus on
8 U.S. Pharma.

9 A. I don't know. I've never -- in
10 U.S. Pharma?

11 Q. Yes, sir.

12 A. I mean, I report directly to
13 the president of the business unit, so one.

14 Q. Okay. And the role as COO of
15 U.S. Pharma is a role of significant
16 responsibility, true?

17 A. I believe I see a
18 significant -- I take my role as having
19 significant responsibility. I take it
20 seriously, yeah.

21 Q. I mean, it's a high-ranking
22 role at the company, true?

23 A. It's a senior leadership role.

24 Q. Right.

25 Now, the McKesson U.S. Pharma

1 sales force, from the time that you joined
2 the company to present, what would you
3 approximate is the average size of the U.S.
4 Pharma sales force for McKesson during that
5 time frame?

6 A. Across both of our segments for
7 retail, independent and health systems, I
8 think the field sales organization is
9 approximately 200 people.

10 Q. Okay. When you say field
11 sales, what does that mean?

12 A. Those that are in the primary
13 selling relationships that hold the title of
14 retail sales manager for independent or
15 account manager for our health systems and
16 hospital business.

17 Q. Okay. So those 200, would that
18 also include the district sales managers and
19 the vice presidents positions?

20 A. No, I think including sales
21 management, probably closer to 250.

22 Q. Okay. When you took over the
23 role as COO in 2017, did you have to undergo
24 any sort of specific training for that role?

25 A. As I mentioned earlier, there

1 was, I would say, an overlap with my
2 predecessor, where we spent time talking
3 about the role and responsibilities and how
4 he spent his time and where he would like to
5 spend his time and what he thought I should
6 focus mine on, especially in the short term.

7 Q. What were those focus areas he
8 told you you should focus on?

9 A. You know, as I recall back, you
10 know, we spent a significant amount of time
11 talking about our people, the organizational
12 design. We spent time, you know, talking
13 about certain components of the business,
14 everything from finance to regulatory to
15 audit to compliance.

16 You know, and I think it was
17 helping me get an awareness of what was going
18 to be different as I moved from my previous
19 role into the current role.

20 Q. Okay. Did you have any sort of
21 formalized training before taking over as --
22 or as you took over the role of COO?

23 A. By formalized training --

24 Q. Right. Did you have any sort
25 of, you know, sit-down training sessions

1 where there's an agenda that's reviewed where
2 you're taught certain aspects of the
3 position?

4 A. No, I don't remember a
5 classroom or formal training as you describe.

6 Q. Okay. Now, when you took over
7 the role as COO, did you undertake any sort
8 of historical analysis to understand how the
9 sales department at U.S. Pharma has worked
10 for the company over time?

11 MS. HENN: Objection to form.

12 A. I've been a part of the sales
13 organization for U.S. Pharma in one role or
14 another for the better part of my career. I
15 think -- I don't remember that being a
16 conversation I had with Frank.

17 BY MR. BOGLE:

18 Q. Okay. So if I'm understanding
19 you correctly, it's something you felt like
20 you were already knowledgeable about when you
21 took over the role?

22 A. I believe I have a pretty good
23 understanding.

24 Q. Okay. How about on the
25 operations side, did you undertake any sort

1 of analysis as to how the operations side of
2 the business at U.S. Pharma at McKesson has
3 worked historically prior to you taking over
4 that role?

5 MS. HENN: Objection to form.

6 A. You know, my two prior roles as
7 vice president and general manager and senior
8 vice president had operating responsibilities
9 for distribution centers, so, no, I don't
10 remember specific training or conversations
11 relative to the DC operations. I believe I
12 had a pretty good understanding.

13 BY MR. BOGLE:

14 Q. Okay. And that's -- I'm just
15 trying -- that's fine. I just want to make
16 sure I understood.

17 So again, just sort of similar
18 to the sales aspect, you felt when you took
19 over the position of COO in 2017, given your
20 time with the company, you had a good
21 understanding of how the operations side of
22 the company worked; is that true?

23 A. I think I continue to learn
24 ever day but I believe I have a good
25 understanding. I competed for the role and

1 was selected, so I believe others had
2 confidence in my understanding as well.

3 Q. When you say you competed for
4 the role, what do you mean?

5 A. There was an interview process.
6 I believe probably others had interest in the
7 role and were considered, and I was selected.

8 Q. Okay. How did you find out the
9 role was available to be filled?

10 A. Conversations with leadership
11 at U.S. Pharma.

12 Q. Okay. Do you recall who
13 informed you of that initially?

14 A. It was probably Mark Walchirk.
15 Frank had decided not to come with the
16 company to Dallas and there was going to be
17 an opening.

18 Q. And you work in the Dallas
19 area; is that true?

20 A. I do. I'm officed here in Las
21 Colinas.

22 Q. So now at your time in the
23 last -- I guess it's almost 18 years at the
24 company, have you developed an understanding
25 as to McKesson's practices as far as

1 distribution of opioids?

2 MS. HENN: Objection to form.

3 A. I've been part of U.S. Pharma
4 for 17 years. I actually believe I just
5 crossed my 17th anniversary with the company.

6 BY MR. BOGLE:

7 Q. Okay.

8 A. And, yeah, through my
9 experience and time, I'm familiar with our
10 responsibility and ability to distribute
11 controlled substances.

12 Q. Okay. Including opioids?

13 A. I believe opioids are a
14 controlled substance, yes.

15 Q. Right. And during your time at
16 the company, do you feel like you've gained
17 knowledge as to the sales practices of
18 McKesson as it relates to opioids in the last
19 17 years?

20 MS. HENN: Objection to form.

21 A. I think I have a good
22 understanding of our sales practices, the
23 responsibilities of our sales teams, what we
24 ask our sales teams to do and how we expect
25 them to perform.

1 BY MR. BOGLE:

2 Q. Okay. Do you agree that there
3 is an epidemic ongoing, an opioid epidemic
4 ongoing in this country?

5 A. I am acutely aware of the
6 epidemic as it's been well documented and
7 described.

8 Q. Okay. When you say acutely
9 aware, what do you mean by that?

10 A. I'm very aware.

11 Q. Okay. The term "diversion,"
12 have you heard of that term before?

13 A. I have.

14 Q. What do you understand that
15 term to mean as it applies to controlled
16 substances?

17 A. I would say, you know, people
18 acquiring, using, dispensing prescription
19 medications, controlled substances, including
20 opioids, in a way that's not consistent with
21 how they're intended.

22 Q. Do you agree that diversion of
23 opioids has contributed to the opioid
24 epidemic?

25 MS. HENN: Objection to form.

1 A. I'm not sure of the connection.

2 BY MR. BOGLE:

3 Q. Okay. Is that something you've
4 ever looked at for yourself?

5 MS. HENN: Objection to form.

6 A. No, I'm not aware that I've
7 done any specific research on the connection.

8 BY MR. BOGLE:

9 Q. Okay. You would agree that
10 protecting the health and safety of the
11 public is the most important role for a
12 pharmaceutical distributor like McKesson,
13 right?

14 A. I think we have an important
15 responsibility to play in our part of the
16 supply chain, and that we have very clear
17 responsibilities under the Controlled
18 Substances Act and making sure that we uphold
19 those responsibilities is important.

20 Q. Okay. And the responsibilities
21 under the Controlled Substances Act
22 specifically, those are important
23 responsibilities.

24 You would agree with that,
25 right?

1 A. I believe all of our regulatory
2 responsibilities are important, yes.

3 Q. Okay. To include
4 responsibilities under the Controlled
5 Substances Act, true?

6 MS. HENN: Objection to form.

7 A. All of our responsibilities,
8 including our responsibilities under the
9 Controlled Substances Act, we take them very
10 seriously.

11 BY MR. BOGLE:

12 Q. Okay. And McKesson, during the
13 17 years you've been with the company, has
14 distributed opioid products, right?

15 A. We have distributed
16 prescription medications of all kinds,
17 including controlled substances, and yes,
18 including opioids.

19 Q. Okay. And you understand that
20 opioids are narcotics? That's the class of
21 drug they're in, right?

22 A. I believe I have heard them
23 referred to that way, yes.

24 Q. And you referenced the
25 Controlled Substances Act a minute ago. You

1 have an understanding that the Controlled
2 Substances Act is, by design, intended to
3 assist in preventing diversion, right?

4 MS. HENN: Objection to form.

5 A. I'm -- I have an awareness and
6 an understanding of our responsibilities
7 under the Controlled Substances Act. I
8 understand our responsibilities to guard
9 against diversion.

10 BY MR. BOGLE:

11 Q. Okay. And do you understand
12 why those responsibilities exist as to
13 McKesson, to guard against diversion? What's
14 the purpose of them?

15 MS. HENN: Objection to form.

16 A. I believe I do. I believe the
17 responsibilities that we have, as well as
18 other partners in the supply chain, are meant
19 to be collaborative and corresponding and
20 build on each other to make sure that there's
21 effective checks and balances from physicians
22 to pharmacies to distributors to
23 manufacturers, to have effective controls
24 that guard against diversion.

25 BY MR. BOGLE:

1 Q. Okay. In those checks and
2 balances you referred to, do you have an
3 understanding as to why those would be
4 important to have in place?

5 MS. HENN: Objection to form.

6 A. I think because the supply
7 chain is complex and every part of it has a
8 role, and, you know, our responsibility is
9 equally important.

10 BY MR. BOGLE:

11 Q. Okay. And you agree that
12 McKesson has a role in attempting to prevent
13 diversion of controlled substances, right?

14 A. Again, my understanding is to
15 have effective controls to guard against
16 diversion.

17 Q. Okay. In your mind, is there a
18 difference between guarding against diversion
19 and attempting to prevent it, and if so,
20 what's the difference?

21 A. You know, I'm not a lawyer, and
22 the technical differences there, you know,
23 it's always been explained to me that
24 guarding against diversion is our
25 responsibility, and that's how we see it.

1 Q. Okay. I'm not asking you as a
2 lawyer. I'm just asking -- making sure I
3 understand what you understand the
4 responsibilities to be.

5 So do you think there's a
6 distinction in your mind as to guarding
7 against diversion versus attempting to
8 prevent diversion?

9 A. I guess the distinction for me
10 is that preventing is, you know, very
11 difficult, you know, with the complexity of
12 our supply chain and that we're doing our
13 best to prevent, to guard against, is our
14 responsibility.

15 Q. And whether it's difficult or
16 not, it's an important thing to -- for
17 McKesson to do its best to accomplish, right?

18 A. We work incredibly hard at it.
19 That's been my experience.

20 Q. Okay. And so because it's an
21 important thing to try to accomplish, right?

22 MS. HENN: Objection to form.

23 A. Our responsibilities under the
24 Controlled Substances Act are important, yes.

25 BY MR. BOGLE:

1 Q. You mentioned having effective
2 controls against diversion. What do you
3 understand that to include? What's
4 encompassed within that?

5 MS. HENN: Objection to form.

6 A. I think there are several
7 components that we understand our
8 responsibilities to be, and they range from
9 knowing our customer to having systems in
10 place to identify orders that could
11 potentially deviate in frequency, size or
12 pattern.

13 BY MR. BOGLE:

14 Q. Okay. You understand that one
15 of McKesson's responsibilities is to monitor
16 for suspicious controlled substance orders,
17 correct?

18 A. A part of our program to guard
19 against diversion is that we monitor orders
20 to see if they deviate, like I said, pattern,
21 size, frequency. That is a component of the
22 program.

23 Q. And you also understand that
24 there is an obligation of McKesson to report
25 suspicious orders when they are detected,

1 right?

2 A. Under the Controlled Substances
3 Act, I believe we have a responsibility to
4 report orders that we deem -- I'm sorry.

5 Q. Yeah. Were you done? I'm
6 sorry.

7 A. Yes.

8 Q. Okay. And under the Controlled
9 Substances Act, McKesson also has an
10 obligation to halt the shipment of suspicious
11 orders when they're detected, true?

12 MS. HENN: Objection to form,
13 lacks foundation.

14 A. I believe our responsibility is
15 to have effective controls to guard against
16 diversion.

17 BY MR. BOGLE:

18 Q. Okay. I think my question was
19 more specific than that. Let me reask it
20 just to make sure.

21 Under the Controlled Substances
22 Act, McKesson also has an obligation to halt
23 the shipment of suspicious orders when
24 they're detected, true?

25 MS. HENN: Objection to form,

1 lacks foundation.

2 A. I'm not sure. I think in
3 our -- our practice is to stop orders that we
4 deem -- I would like to maybe see the
5 regulations again -- I don't have them. To
6 stop the order? I'm not sure.

7 I mean, to identify orders and
8 to report them, to have effective controls.

9 BY MR. BOGLE:

10 Q. Okay. Well, let me ask you
11 this: Do you think there's any better way to
12 have effective controls against diversion
13 than stopping the shipment of suspicious
14 orders when they're detected?

15 MS. HENN: Objection to form.

16 A. I would respond that the fact
17 that our program does exactly that today,
18 that we -- is an important part of our
19 program.

20 BY MR. BOGLE:

21 Q. Okay. That hasn't always been
22 a part of McKesson's program, though, has it?

23 MS. HENN: Objection to form.

24 A. No, it hasn't always been a
25 part. I think the Controlled Substances Act

1 has been in place for the better part of
2 30-plus years, so, no, it hasn't always been
3 our practice.

4 BY MR. BOGLE:

5 Q. Okay.

6 A. To do it -- and I just want to
7 clarify.

8 Q. Yeah.

9 A. To do it as we do today, you
10 know, I'm not 100% aware of what was in
11 place, you know, prior to my joining the
12 company and I'm not as familiar with what
13 processes might have been in place from 2002
14 to roughly 2008.

15 Q. Okay. And let me rephrase the
16 question just because I think it's fair. I'm
17 not asking you what happened before '02. I
18 don't think that that's something I'm asking
19 you. So let me rephrase it in case it was
20 unclear.

21 In the time you've been with
22 the company, it has not always been
23 McKesson's practice to halt suspicious orders
24 when they're identified before they are
25 shipped?

1 MS. HENN: Objection to form,
2 asked and answered.

3 BY MR. BOGLE:

4 Q. True?

5 A. I mean, I couldn't say for
6 certain. I mean, we had a regulatory
7 affairs. We had a monitoring program. We
8 were -- but I'm not sure of all the mechanics
9 of what might have happened to an order, you
10 know, from -- during the time of my sales
11 executive and most of my district sales
12 manager experience.

13 So I couldn't say for certain
14 if there was a period of time where we did
15 not have this in place in one form or
16 another.

17 Q. Okay. What I think you sort of
18 intimated, you believe it's an important part
19 of McKesson's program today, right?

20 MS. HENN: Objection to form.

21 A. I think the fact that we have
22 the ability to systemically stop an order
23 that deviates is an important -- from size,
24 pattern, frequency, is an important part of
25 our program today.

1 BY MR. BOGLE:

2 Q. Do you have an understanding
3 that while you've been with the company at
4 any point in time that McKesson lacked that
5 ability in some way, shape or form?

6 A. I don't know. I think our
7 abilities have improved over time, and we've
8 gotten more sophisticated in the ways we do
9 it, but I don't know that we ever lacked it.

10 Q. Okay. I'm going to hand you
11 what I'm marking as Exhibit 2 to your
12 deposition, which is also 1.1464. Bates
13 number is MCKMDL00478906.

14 And, Mr. Cavacini, I have to
15 read off the numbers. You don't have to
16 worry about that part, I just have to do it.

17 (McKesson-Cavacini Deposition
18 Exhibit 2 marked.)

19 BY MR. BOGLE:

20 Q. Okay. To orient you to
21 Exhibit 2 here, you see at the top is a
22 letter from the U.S. Department of Justice,
23 Drug Enforcement Administration, dated
24 September 27, 2006?

25 Do you see that, top of the

1 first page?

2 A. September 27th, 2006, yes.

3 Q. Have you ever seen this letter
4 before?

5 A. I believe I have, yes.

6 Q. Do you recall about when you
7 first saw this letter?

8 A. I can't say for certain when I
9 first saw it. I do know I've seen it.

10 Q. Okay. I want to take a look at
11 a couple of aspects of this letter here. The
12 first paragraph says: This letter is being
13 sent to every commercial entity in the United
14 States registered with the Drug Enforcement
15 Administration (DEA) to distribute controlled
16 substances. The purpose of this letter is to
17 reiterate the responsibilities of controlled
18 substance distributors in view of the
19 prescription drug abuse problem our nation
20 currently faces.

21 Do you see that?

22 A. I do, yes.

23 Q. Okay. And given your 17 years
24 at the company, do you have an understanding
25 at this point in time in 2006 that there was

1 a prescription drug abuse problem in the
2 United States that was ongoing?

3 MS. HENN: Objection to form.

4 A. It's hard for me to say exactly
5 what I knew in 2006. I think my awareness
6 was probably growing and developing at that
7 time, but I can't say exactly what I knew. I
8 do see that in the next sentence, you know.

9 BY MR. BOGLE:

10 Q. Okay. Let me ask it to you
11 this way then.

12 Do you understand as you sit
13 here today that there was a prescription drug
14 abuse problem that our nation was facing in
15 2006?

16 MS. HENN: Objection to form,
17 asked and answered.

18 BY MR. BOGLE:

19 Q. Do you have that knowledge
20 today?

21 MS. HENN: Same objection.

22 A. I mean, I -- the next sentence
23 of the letter says that the abuse of
24 controlled prescription drugs is a serious
25 and growing healthcare problem in the

1 country; so in 2006, that was the position of
2 the DEA.

3 BY MR. BOGLE:

4 Q. Okay. I guess what I'm asking
5 you though is: As you sit here today, do you
6 have any disagreement that there was a
7 prescription drug abuse problem that dates
8 back to at least 2006?

9 MS. HENN: Objection to form,
10 asked and answered.

11 A. I don't know. And my awareness
12 of it, you know, grew over time, and when it
13 exactly started to take hold is hard for me
14 to say. We've covered -- its existence today
15 is very well documented.

16 BY MR. BOGLE:

17 Q. I want to look at the third
18 paragraph on the first page here. It says:
19 The CSA was designed by Congress to combat
20 diversion by providing for a closed system of
21 drug distribution, in which all legitimate
22 handlers of controlled substances must obtain
23 a DEA registration and, as a condition of
24 maintaining such registration, must take
25 reasonable steps to ensure that their

1 registration is not being utilized as a
2 source of diversion.

3 Do you see that?

4 A. I do.

5 Q. Okay. The concept of a closed
6 system of drug distribution, that's a concept
7 you're familiar with as it pertains to
8 controlled substances, right?

9 MS. HENN: Objection to form.

10 A. It's a term I've heard before,
11 and I think in an earlier answer of what I
12 was trying to describe with the different
13 members of the supply chain that have equal
14 and corresponding responsibility.

15 BY MR. BOGLE:

16 Q. And by having a closed system
17 of distribution, that means that not every
18 distributor out there can distribute
19 controlled substances; you have to actually
20 have a registration that's granted by the
21 DEA, right?

22 MS. HENN: Objection to form,
23 compound.

24 A. I believe to be a distributor
25 of controlled substances you need to have a

1 registration that's granted by the DEA, and
2 I've referred to that as a privilege that we
3 have.

4 BY MR. BOGLE:

5 Q. And the next sentence says:
6 Distributors are, of course, one of the key
7 components of the distribution chain.

8 Do you agree with that?

9 A. I would, yes.

10 Q. Okay. It says: If the closed
11 system is to function properly as Congress
12 envisioned, distributors must be vigilant in
13 deciding whether a prospective customer can
14 be trusted to deliver controlled substances
15 only for lawful purposes.

16 Do you see that sentence?

17 A. I do.

18 Q. Do you agree with that?

19 MS. HENN: Objection to form,
20 calls for speculation.

21 A. I agree that as I stated
22 earlier, knowing our customers and having an
23 understanding of their business is a
24 responsibility we have and is a core
25 component of the program we have in place

1 today.

2 Q. Okay. And that responsibility
3 has existed the entire time you've been with
4 the company, right?

5 MS. HENN: Objection to form.

6 A. I believe that our
7 responsibilities under the Controlled
8 Substances Act have existed during my entire
9 time with the company.

10 BY MR. BOGLE:

11 Q. Okay. The next sentence says:
12 This responsibility is critical as Congress
13 has expressly declared that the illegal
14 distribution of controlled substances has a
15 substantial and detrimental effect on the
16 health and general welfare of the American
17 people.

18 Do you see that?

19 A. I do see that.

20 Q. Okay. If you go to the second
21 page of the letter here, and I'm about
22 three-quarters of the way down the page, the
23 paragraph that starts "Thus, in addition."

24 Do you see where I'm at?

25 A. I do.

1 Q. Okay.

2 A. Third paragraph up from the
3 bottom.

4 Q. That's correct, sir.

5 It says there: Thus, in
6 addition to reporting all suspicious orders,
7 a distributor has a statutory responsibility
8 to exercise due diligence to avoid filling
9 suspicious orders that might be diverted into
10 other than legitimate medical, scientific,
11 and industrial channels.

12 Do you see that reference?

13 A. I do.

14 Q. Okay. Is that consistent with
15 what your understanding was in 2006 that
16 distributors like McKesson had a statutory
17 responsibility to avoid filling suspicious
18 orders?

19 MS. HENN: Objection to form,
20 lacks foundation.

21 A. In my responsibility -- my
22 understanding of our responsibility under the
23 Controlled Substances Act is to have an
24 effective program to guard against diversion.

25 BY MR. BOGLE:

1 Q. Okay. Does that include
2 avoiding filling suspicious orders once
3 they're detected?

4 MS. HENN: Objection to form.

5 A. I think I stated earlier that
6 I'm not clear on how our responsibility to
7 stop or prevent filling is specifically
8 called out in the controlled substance
9 regulations, but to identify orders that
10 deviate, to report those orders, and to have
11 an effective program that guards against
12 diversion is.

13 BY MR. BOGLE:

14 Q. Okay. So from this letter in
15 September 27th, 2006, do you think there's
16 anything unclear about the sentence I just
17 read which indicates that distributors should
18 avoid filling suspicious orders that might be
19 diverted into other than legitimate medical,
20 scientific and industrial channels?

21 MS. HENN: Objection to form.

22 A. Nothing unclear about the
23 letter. What is unclear to me is how, if
24 any, this relates to the actual statute, the
25 Controlled Substances Act.

1 BY MR. BOGLE:

2 Q. Okay. The sentence I read
3 here, though, indicates that at least in 2006
4 it was DEA's view that that was part of a
5 statutory responsibility, correct?

6 MS. HENN: Objection to form.

7 A. I see where in this letter it
8 states that they believe, in addition to
9 reporting, the distributor has a statutory
10 responsibility to exercise due diligence.

11 BY MR. BOGLE:

12 Q. Do you have any independent
13 knowledge as you sit here today that that was
14 not part of McKesson's statutory
15 responsibilities during the entire time
16 you've been with the company?

17 MS. HENN: Objection to form,
18 calls for a legal conclusion.

19 A. Could you repeat the question.

20 BY MR. BOGLE:

21 Q. Sure.

22 Do you have any independent
23 knowledge as you sit here today that the
24 responsibility to avoid filling suspicious
25 orders was not part of McKesson's statutory

1 responsibilities for the entire time you've
2 been with the company?

3 MS. HENN: Objection to form,
4 calls for a legal conclusion.

5 A. I'm not sure, and I think -- I
6 keep coming back to what my understanding of
7 our responsibilities are, and that's to have
8 an effective program to guard against
9 diversion.

10 BY MR. BOGLE:

11 Q. Okay. But to my question as to
12 whether you have any independent knowledge
13 that McKesson lacked the statutory
14 responsibility to avoid filling suspicious
15 orders during the entire time you were with
16 the company, can you speak to that?

17 MS. HENN: Objection to form,
18 lacks foundation and calls for a legal
19 conclusion.

20 A. I mean, I'm not a lawyer and I
21 don't know how to answer that. I'm sorry.

22 BY MR. BOGLE:

23 Q. Okay. And I'm not asking you
24 as a lawyer. I'm asking you as an individual
25 who's acting as the COO of the company and

1 has worked for 17-plus years at McKesson.

2 Is that, as you did your
3 day-to-day job at any point in time, did you
4 understand that to always be your
5 responsibility?

6 MS. HENN: Objection to form,
7 lacks foundation, calls for a legal
8 conclusion, asked and answered.

9 A. And I'm unclear if this
10 statement of statutory responsibility is in
11 the regulations today, so -- or if it was in
12 the regulations at that time. That's where
13 my understanding of the Controlled
14 Substances -- I'm not familiar with that
15 term.

16 BY MR. BOGLE:

17 Q. Okay. So I guess going back to
18 my question: Do you have any independent
19 knowledge as you sit here today that at any
20 point in time you were at the company, that
21 was not McKesson's responsibility?

22 MS. HENN: Objection, asked and
23 answered, lacks foundation, calls for
24 a legal conclusion.

25 A. Do I have any...

1 I don't know.

2 BY MR. BOGLE:

3 Q. Okay. Let me ask it to you a
4 different way.

5 The concept of being a good
6 corporate citizen, that's something that's
7 important at McKesson, right?

8 A. I believe we have, you know, a
9 deep commitment to being part of the
10 communities we serve and being good stewards
11 of them.

12 Q. And as a company aiming to be a
13 good corporate citizen, do you think in that
14 regard that it's important that when the
15 company detects suspicious orders, that they
16 not fill them when it comes to controlled
17 substances like opioids?

18 MS. HENN: Objection to form.

19 A. I believe that that capability
20 and that capability as part of our program
21 today is very important to our
22 responsibility.

23 BY MR. BOGLE:

24 Q. Okay. And from 2002 to
25 present, can you ever think of a point in

1 time when that should not have been important
2 to the company --

3 MS. HENN: Objection --

4 BY MR. BOGLE:

5 Q. -- as a good corporate citizen?

6 MS. HENN: Objection to form.

7 A. As I think back under my
8 experience and my exposure and -- we've
9 always had a commitment to exercise our
10 responsibilities to the best of our abilities
11 and have a program that effectively guarded
12 against diversion, that we took seriously
13 the -- I'm sorry, go ahead.

14 BY MR. BOGLE:

15 Q. No, no, I want to make sure
16 you're done.

17 A. The components of that program
18 have evolved over time.

19 Q. Yeah. I understand that. I
20 think I'm not -- and I'm not asking you
21 specifically about the Controlled Substances
22 Act right now. Let me make that clear.

23 I'm asking you, as a good
24 corporate citizen, do you think there's any
25 point in time since you've been at McKesson

1 that it should not have been the company's
2 aim to avoid filling suspicious orders of
3 opioids when they were detected by the
4 company?

5 MS. HENN: Objection to form,
6 calls for speculation.

7 A. I think -- I mean, I feel like
8 I've responded. We've always tried to
9 maintain an effective program, a robust
10 program, and I believe we would have used
11 tools at our disposal to do it. Those have
12 evolved.

13 I'm not clear during that
14 period of time what the mechanics were of
15 every component of the program. I think
16 there are people that are more informed and
17 educated to better answer that question.

18 I'm not sure it wasn't a
19 component of our program back at that time.
20 I am much more aware that it's different
21 today and how we do it today and how that has
22 evolved.

23 BY MR. BOGLE:

24 Q. Okay. Independent of whether
25 it was or wasn't part of your -- part of the

1 program, should it have been?

2 MS. HENN: Objection to the
3 form, asked and answered.

4 A. Well, it's hard for me to
5 speculate what was even possible, what could
6 have been done and what we knew or what tools
7 or resources we had, you know.

8 BY MR. BOGLE:

9 Q. Okay. Well, you understand
10 that McKesson as a distributor of, as you
11 said, many different types of products and
12 items, that you guys have a choice to decide
13 to ship or not ship any sort of product that
14 a company orders, right?

15 MS. HENN: Objection to form,
16 lacks foundation.

17 A. I don't -- I don't know that I
18 necessarily agree with the premise of the
19 question, the way the question is structured.

20 BY MR. BOGLE:

21 Q. Okay. So do you -- is it your
22 view that McKesson, as it pertains to any
23 product that it sells, lacks the opportunity
24 to deny the customer the product if they
25 think it's not appropriate to give it to

1 them?

2 MS. HENN: Objection to form,
3 compound, lacks foundation.

4 A. I think about our
5 responsibility as a distributor to make sure
6 that legitimate medical products, medicines,
7 durable medical equipment, are available to
8 healthcare providers at the time that they
9 need it, and, you know, I don't know that
10 we're in a position to deny access to
11 products that are ordered by pharmacists for
12 their needs pursuant to a prescription.

13 We have some influence and
14 ability of who we do business with. I mean,
15 I agree with that, but reviewing every order
16 for any product and determining if it's
17 appropriate or needed, I don't know that I
18 would agree that we're in that position.

19 Q. Okay. So take this as an
20 example.

21 McKesson is, first of all, a
22 for-profit business, right?

23 A. We're a publicly traded
24 healthcare compare.

25 Q. Right. So you guys, for

1 example, are not in the practice of providing
2 pharmacies medications if they told you that
3 there's no way we can ever pay you for any
4 medications that we order, right?

5 A. I think when I referenced we
6 have some choice of who we do business with,
7 who we open up accounts with, yeah, I mean,
8 reasonable to assume that if an account had
9 no ability or willingness to pay, we probably
10 wouldn't knowingly enter into a business
11 relationship.

12 Q. And if you already had a
13 relationship with them and they came to you
14 at some point thereafter and said we can't
15 pay you for any product any further going
16 forward, but will you still do business with
17 us, can you think of an instance where
18 McKesson has said, yes, we'll, in perpetuity,
19 do business with you despite the fact you
20 can't pay?

21 MS. HENN: Objection to form.

22 A. No. No, if we were knowing and
23 a customer had expressed their ability to not
24 pay and depending on our contractual
25 relationships with that customer, I mean, I

1 am aware of some that we are obligated to
2 keep shipping even if they don't pay, state
3 governments, for example; as a matter of due
4 practice, if they didn't have the ability to
5 continue to pay us, we probably would not
6 continue to do business with them.

7 BY MR. BOGLE:

8 Q. Okay. I want to talk to you --
9 shift gears a little bit and talk to you
10 about the CSMP, and specifically the
11 responsibilities over time of the sales
12 department under the CSMP, okay?

13 A. Okay.

14 Q. So first of all, just to sort
15 of orient ourselves, you understand that the
16 Control Substances Monitoring Program, the
17 CSMP, was implemented in 2008, right?

18 A. I can say for certain that I
19 became first aware of the Controlled
20 Substances Monitoring Program during my time
21 as a district sales manager, so that -- 2008
22 would have been in the time frame, but I
23 can't say for sure exactly it was 2008.

24 Q. Okay. All right.

25 Well, I can represent to you

1 that's the first evidence that we have of it
2 being put into place, so if there's any
3 contrary evidence, then we can deal with that
4 later.

5 A. Okay.

6 Q. But are you familiar with the
7 Lifestyle Drug Monitoring Program that was in
8 place prior to the CSMP?

9 A. I'm am familiar with our
10 Lifestyle Drug Monitoring Program.

11 Q. Okay. And you understand the
12 purpose of both of these programs from a
13 general perspective was to monitor for
14 suspicious controlled substance orders,
15 right? As a big picture perspective, that's
16 the purpose of the program, right?

17 A. I think it was an evolution of
18 our commitment to exercise our
19 responsibilities under the Controlled
20 Substances Act that were part of our program
21 to guard against diversion.

22 Q. And you say part of your
23 commitment. The CSMP itself was implemented
24 as part of a 2008 settlement agreement with
25 the DEA, right?

1 MS. HENN: Objection to form,
2 lacks foundation.

3 A. I'm not sure of -- the
4 connection or correlation of CSMP came
5 directly out of the settlement. The timing
6 was around the time of the settlement.

7 BY MR. BOGLE:

8 Q. So am I understanding correctly
9 that you don't have an understanding, one way
10 or the other, as to whether the CSMP was
11 derived at the insistence of the DEA as part
12 of a 2008 settlement agreement with McKesson?

13 A. No, I don't know that I know
14 that to be the case.

15 Q. Okay. Backing up, you do know
16 there was a settlement agreement entered
17 between McKesson and the DEA regarding
18 violations of the Controlled Substances Act,
19 correct?

20 MS. HENN: Objection to form,
21 lacks foundation.

22 A. I'm aware that there were
23 allegations made by the DEA that the company
24 entered into a settlement in 2008.

25 BY MR. BOGLE:

1 Q. Okay. Have you seen that
2 agreement?

3 A. I believe I have, yes.

4 Q. About when did you see it, do
5 you recall? Just a year would be fine.

6 MS. HENN: Objection to form.

7 A. I can't say for certain when I
8 first saw it.

9 BY MR. BOGLE:

10 Q. Okay. And you do understand,
11 though, that the CSMP was not drafted in
12 response to any change to the Controlled
13 Substances Act, though, right?

14 MS. HENN: Objection to form,
15 calls for speculation.

16 A. I'm not aware that the
17 Controlled Substances Act changed.

18 BY MR. BOGLE:

19 Q. Okay. Let's just take a look
20 at something real quick. I'm going to hand
21 you what I'm marking as Exhibit 3, which is
22 1.704, Bates number is MCKMDL00267635.

23 MS. HENN: If this is -- if
24 we're about to start some lengthy
25 questions, we've been going about an

1 hour. Is this a good time for a
2 five-minute break?

3 MR. BOGLE: That's fine. I'll
4 give it to you after the break.

5 THE VIDEOGRAPHER: We're off
6 the record at 10:01 a.m.

7 (Recess taken, 10:01 a.m. to
8 10:10 a.m.)

9 THE VIDEOGRAPHER: We are back
10 on the record at 10:10 a.m.

11 BY MR. BOGLE:

12 Q. Okay. Mr. Cavacini, I think we
13 left off with me about to hand you an
14 exhibit, so let me go ahead and do that. I'm
15 going to hand you Exhibit 3, which is 1.704,
16 and that's MCKMDL00267635.

17 (McKesson-Cavacini Deposition
18 Exhibit 3 marked.)

19 BY MR. BOGLE:

20 Q. And just to orient you before
21 we get into this document itself, I had asked
22 you whether -- I believe I asked you, at the
23 time the CSMP was implemented, you understand
24 there was no change to the Controlled
25 Substances Act that prompted the CSMP being

1 implemented.

2 Do you recall that question?

3 MS. HENN: Objection to form.

4 A. I do recall the question. I
5 think I just want to be clear: I'm not sure
6 if there was a change or not. I don't
7 believe there was.

8 BY MR. BOGLE:

9 Q. Right. And what's why I'm
10 giving you this.

11 A. Okay.

12 Q. I just want to reorient you
13 before we got to the path.

14 You see here's an e-mail with
15 PowerPoint slides attached to it.

16 Do you see that?

17 A. I do, yes.

18 Q. Okay. And see there's -- the
19 e-mail is dated March 7, 2008 from a Cathy
20 Scofield to a group of individuals.

21 Do you see that?

22 A. I do.

23 Q. And the first sentence of her
24 e-mail says: Attached is the CSMP sales
25 training deck we will be presenting to the

1 Denver team on Monday.

2 Do you see that?

3 A. I do, yes.

4 Q. And do you recall in 2008 you
5 and other members of the sales training force
6 receiving training on the CSMP?

7 A. I think as I stated earlier, I
8 can absolutely say it was during my time as a
9 district sales manager is when I received,
10 you know, in-depth training on our CSMP.
11 It's hard for me to say exactly when during
12 that period it took place, but I see here
13 that it was being rolled out to the Denver
14 team in March of 2008.

15 Q. Okay. And I guess if I'm
16 understanding you correctly, I know you were
17 not on the Denver team, but there would have
18 been similar training presentations done for
19 your team, correct?

20 A. I do look forward to reviewing
21 the materials. I would expect there would
22 have been similar trainings for my teams. I
23 don't know -- I can't say for certain if they
24 were before or after this date. That's where
25 I'm just not sure.

1 Q. Okay. I'm looking at page .6
2 of the document here.

3 A. Page?

4 Q. Yeah, sorry the point pages are
5 I think at the top. It's easier than
6 referencing the Bates numbers. Okay.

7 You see a slide there titled
8 CSMP Overview. Do you see that?

9 A. I do.

10 Q. And the first bullet point
11 below that says New Controlled Substance
12 Monitoring Program, and then it says below
13 that: Regulation has not --

14 And "has not" is bolded, right?

15 A. It is.

16 Q. -- changed, but the extent to
17 which we are now required to monitor and
18 provide stronger safeguards to ensure
19 legitimate use of controlled substances has.

20 And then "has" is bolded as
21 well, right?

22 A. It is.

23 Q. Okay. Now, I had asked you a
24 little bit about the 2008 settlement
25 agreement a minute ago, and I think you said

1 at some point in time you recall having
2 reviewed that agreement, right?

3 A. I have seen the document.

4 Q. I want to look at a couple of
5 aspects of that with you. That's going to be
6 Exhibit 4, and it's 1.889. Bates number is
7 MCKMDL00337001.

8 Mr. Cavacini, there you go.

9 (McKesson-Cavacini Deposition
10 Exhibit 4 marked.)

11 BY MR. BOGLE:

12 Q. Just to orient you on the first
13 page, if you need to look at anything, let me
14 know, but I just kind of want to orient you
15 to the document first, if you don't mind.

16 The first page says:

17 Settlement and Release Agreement and
18 Administrative Memorandum of Agreement, and
19 in the first paragraph there's a date of
20 May 2nd, 2008.

21 Do you see that there?

22 A. I do, May 2nd, 2008.

23 Q. Okay. Do you recognize this as
24 the settlement agreement you reviewed
25 previously?

1 A. It looks like the same
2 document, yes.

3 Q. Okay. And you do understand
4 from having reviewed this previously that the
5 settlement that was entered into in May of
6 2008 between the DEA and McKesson involved
7 allegations by the DEA of violations of the
8 Controlled Substances Act, many of which
9 included opioid distribution, right?

10 MS. HENN: Objection to form.

11 A. As I get refamiliarized with
12 the allegations that are documented here,
13 they seem to focus around failing to maintain
14 effective controls and alleges failed to
15 report suspicious orders, controlled
16 substances.

17 BY MR. BOGLE:

18 Q. Okay. And the allegations
19 specifically involve, many of them, opioids,
20 right?

21 For example, if you go to
22 Appendix B of the document, on the second
23 page there, there's a section that talks
24 about covered conduct. I think it's 13 pages
25 in, it looks like.

1 A. Is there a point number at the
2 top?

3 Q. It should be, I think, .13.

4 A. .13?

5 Q. Yeah. Do you see where I'm at
6 generally here, the section in the middle of
7 the page titled: The covered conduct shall
8 mean the following alleged conduct?

9 A. I do.

10 Q. Okay. I'm not going to read
11 all the stuff hereafter, but, for example,
12 there's conduct in the District of Maryland
13 involving the distribution of 3 million
14 dosage units of hydrocodone to
15 NuCare Pharmacy in Baltimore from
16 January 2005 to October 2006 the DEA contends
17 McKesson failed to report as suspicious.

18 Do you see that?

19 A. I do see that in the document.

20 Q. Okay. And hydrocodone is an
21 opioid product, right?

22 A. I believe. I'm not 100% sure.

23 Q. Okay. You don't know if
24 hydrocodone is an opiate?

25 A. I can't say for certain.

1 Q. Okay. If you look down in
2 letter B, talking about conduct in the Middle
3 District of Florida, there's a reference to,
4 in October 2005, McKesson-Lakeland sold
5 approximately 2.1 million dosage units of
6 hydrocodone to seven pharmacies in the Tampa
7 area, and then it lists the pharmacies, and
8 failed to report these sales as suspicious
9 orders to DEA when discovered.

10 Do you see that?

11 A. I do see where the document
12 says that, yes.

13 Q. Okay. And then it goes on.
14 There's conduct also outlined in Texas,
15 Colorado, Utah and California.

16 Do you see that?

17 A. Colorado, Utah, California,
18 yes.

19 Q. Okay. So we're talking about
20 conduct that occurred in multiple
21 distribution centers, right? You can see
22 that from the document?

23 MS. HENN: Objection to form,
24 lacks foundation.

25 A. I can see where the document

1 calls out allegations by the DEA in several
2 of our distribution centers.

3 BY MR. BOGLE:

4 Q. Right. For example, the
5 Maryland conduct talks about
6 McKesson-Landover, right?

7 A. It does yes.

8 Q. The Florida conduct refers to
9 McKesson-Lakeland, right?

10 A. It does.

11 Q. The Texas conduct refers to
12 McKesson-Conroe, right?

13 A. It does.

14 Q. The Colorado conduct refers to
15 McKesson-Aurora, right?

16 A. It does, yes.

17 Q. The Utah conduct refers to
18 McKesson-Salt Lake City, right?

19 A. Yes, agreed.

20 Q. And the California conduct
21 refers to McKesson-West Sacramento, right?

22 A. Yes, correct.

23 Q. Those are all different
24 distribution centers that would have existed
25 at McKesson at that point in time, right?

1 A. I believe so, yes.

2 Q. Okay. So when you reviewed
3 this settlement agreement, when it references
4 these allegations regarding hydrocodone,
5 oxycodone, fentanyl, methadone, did you not
6 have an understanding that those were all
7 opioid products?

8 MS. HENN: Objection to form.

9 A. I'm aware that they're all
10 controlled substances. I don't know that I'm
11 aware that they're all opioids.

12 BY MR. BOGLE:

13 Q. Okay. Are you aware of any
14 base chemicals that are in the opiate family?

15 A. I believe so, yes.

16 Q. Which ones?

17 A. Oxycodone.

18 Q. Okay. Any others?

19 A. I believe fentanyl is as well.
20 The question earlier about hydrocodone, I'm
21 just not 100% sure that...

22 Q. Okay. So -- and again, I
23 didn't intend to read all the covered conduct
24 here, but you can if you want to to answer my
25 question.

1 These allegations that are made
2 here by the DEA in this settlement agreement
3 related to hydrocodone, fentanyl, oxycodone,
4 methadone distribution by various McKesson
5 distribution centers, these are serious
6 allegations, right?

7 MS. HENN: Objection to form.

8 A. I would describe them as
9 serious obligations -- allegations, yes.

10 BY MR. BOGLE:

11 Q. Okay. And you understand as
12 part of this settlement agreement, McKesson
13 agreed to pay a \$13.25 million fine, right?

14 MS. HENN: Objection to form.

15 A. I am aware that as a result of
16 the settlement, McKesson did agree and I
17 believe we paid a fine.

18 BY MR. BOGLE:

19 Q. It's page .5 if that helps.

20 A. The 13.25, yes, 13.25.

21 Q. You see that? Okay.

22 In your experiences at 17 years
23 at McKesson, if there are allegations made of
24 wrongdoing by the company, when the company
25 disagrees with those allegations, do they

1 contest them?

2 MS. HENN: Objection to form,
3 calls for speculation.

4 A. I'm not sure in every
5 circumstance. I would -- so the question is
6 if McKesson disagrees with the allegations,
7 do they contest them?

8 BY MR. BOGLE:

9 Q. Right. Allegations as serious
10 as the ones we're looking at here related to
11 distribution of various controlled
12 substances, including opioids.

13 MS. HENN: Objection to form.

14 A. I'm not sure, but --

15 BY MR. BOGLE:

16 Q. Okay.

17 A. I'm not sure.

18 Q. Okay. Well, can -- first of
19 all, \$13.25 million is a lot of money, right?

20 A. I think that's relative. To me
21 that's a lot of money.

22 Q. Okay. And do you think for
23 McKesson that's not a lot of money?

24 A. I don't -- I guess it depends
25 in the context of what it is, you know. I

1 would say generally it's a material sum.

2 Q. Okay. And during your 17 years
3 with the company, can you think of an
4 instance where McKesson has paid a fine of
5 \$10 million or more for conduct that it
6 disagreed that it actually committed?

7 MS. HENN: Objection to form.

8 A. I'm not sure.

9 BY MR. BOGLE:

10 Q. I'm just asking if you're aware
11 of any circumstance that you could advise our
12 jury about.

13 MS. HENN: Objection, asked and
14 answered.

15 MR. BOGLE: You can answer.

16 THE WITNESS: I'm sorry, could
17 you repeat the question?

18 MR. BOGLE: Yeah.

19 BY MR. BOGLE:

20 Q. Are you aware of any
21 circumstance that you could advise our jury
22 about of McKesson disagreeing with
23 allegations of wrongdoing yet paying a fine
24 of more than \$10 million, while you've been
25 at the company?

1 MS. HENN: Objection to form,
2 asked and answered.

3 A. I'm not sure that I understand
4 the question, but I think companies settle
5 disputes through a number of ways, and I'm
6 not familiar with or was involved in any of
7 the conversations that led up to this
8 settlement.

9 BY MR. BOGLE:

10 Q. Okay. Yeah, I'm not talking
11 about other companies. I'm just talking
12 about McKesson. I'm not asking you to talk
13 about other companies.

14 I'm just asking you, in the
15 17 years you've been with McKesson, can you
16 think of a single instance where the company
17 has paid a fine exceeding \$10 million for
18 conduct it disagreed that it actually was
19 involved in?

20 MS. HENN: Objection to form,
21 asked and answered, calls for
22 speculation.

23 A. I'm not sure, but my
24 understanding of this settlement is that we
25 did not admit liability to any of the

1 allegations. The agreement is neither an
2 admission by McKesson of liability of any of
3 the allegations made by the DEA in the orders
4 and investigations, nor a concession by the
5 DEA that its allegations were not well
6 founded.

7 MR. BOGLE: Move to strike as
8 nonresponsive.

9 BY MR. BOGLE:

10 Q. My question was simply whether
11 you can think of a single instance in the
12 last 17 years where McKesson has paid a fine
13 exceeding \$10 million for something it
14 believed it did not do?

15 MS. HENN: Objection, calls for
16 speculation, asked and answered
17 numerous times.

18 A. I'm not sure. I'm not involved
19 in those discussions.

20 BY MR. BOGLE:

21 Q. Okay. When you read this
22 settlement agreement, did you ever reach out
23 to anybody at McKesson and ask whether the
24 company believed or didn't believe it
25 committed the conduct outlined in the

1 settlement agreement?

2 MS. HENN: I'll just object and
3 instruct the witness that to the
4 extent your question is asking for
5 information and conversations that he
6 may have had with attorneys, that he
7 shouldn't answer; but otherwise, he
8 may.

9 MR. BOGLE: Yeah, that's fine.

10 BY MR. BOGLE:

11 Q. So carving out conversations
12 with legal counsel, you ever talk to anybody
13 at McKesson about whether there was a view
14 that the company did or did not do the things
15 outlined in the settlement agreement as it
16 pertained to controlled substances reporting
17 and shipping?

18 A. I don't recall specific
19 conversations to this settlement, and if -- I
20 don't know that I -- in what period of time?

21 Q. Anytime after you read it.

22 A. I'm not sure. I don't recall
23 those conversations.

24 Q. Okay. Meaning you don't recall
25 whether they occurred, right?

1 A. If I -- again, if I proactively
2 reached out and asked anybody if -- was that
3 the question?

4 Q. Yeah, so I'll rephrase it for
5 you just so we're clear.

6 We looked at the covered
7 conduct section here, which outlines covered
8 conduct in one, two, three, four, five, six
9 different McKesson distribution centers.

10 My question is simply, after
11 you read that covered conduct in the
12 settlement agreement, when you read it while
13 you were at McKesson, did you ever reach out
14 to anybody and say, did we actually do that?
15 Did we do those things they're alleging we
16 did?

17 MS. HENN: And I'll make the
18 same objection.

19 MR. BOGLE: Yeah, except with
20 counsel. I'm not asking about
21 counsel.

22 MS. HENN: If I can just make
23 sure to issue the same instruction to
24 the witness about not revealing any
25 conversations you may have had with

1 attorneys.

2 A. Outside of conversations with
3 attorneys, part of our leadership team,
4 maybe -- I don't recall, no.

5 BY MR. BOGLE:

6 Q. Okay. And without revealing
7 the substance of the conversations, did you
8 speak to any attorneys within McKesson about
9 whether the company committed these acts?

10 MS. HENN: Objection to form,
11 vague as to time.

12 A. I don't recall asking that
13 question.

14 BY MR. BOGLE:

15 Q. Okay. Now, after the CSMP was
16 developed and implemented in 2008, the sales
17 force was tasked with going out in the field
18 and informing customers about the fact that
19 there was a new program coming on board,
20 right?

21 A. I would say that the sales
22 force was a part of our program and would
23 have been part of communicating that program
24 to customers.

25 Q. Okay. And specifically with

1 you, one of your roles in 2008 was to take
2 the lead in your geographic area in ensuring
3 that your customers were aware of the CSMP
4 and what it required of them, right?

5 MS. HENN: Objection to form,
6 compound.

7 A. Educating customers on their
8 responsibilities under the Controlled
9 Substances Act?

10 BY MR. BOGLE:

11 Q. No, no, no, under the CSMP,
12 what they would be asked to do.

13 A. I mean, as I think back on my
14 role as a district sales manager, is to work
15 with my team, make sure that the team
16 understood their responsibilities, our shared
17 responsibilities, and be part of cascading
18 that information and making sure that it was
19 being upheld.

20 Q. Okay. So let me just make sure
21 I understand though.

22 When the CSMP would have been
23 implemented in 2008, first of all, you would
24 have had responsibilities with ensuring your
25 team at McKesson understood what its

1 responsibilities were under the CSMP, true?

2 A. I think my role as a district
3 sales manager was to help educate my team on
4 many of their responsibilities, work with
5 them on training and developing skills, and
6 as part of the CSMP and changes we might have
7 made to the program, would have been helping
8 educate them on it.

9 Q. Okay. And you also would have
10 been involved in interactions with customers
11 in your geographic area as to the changes
12 that were being implemented by way of the
13 CSMP, right?

14 MS. HENN: Objection to form,
15 lacks foundation.

16 THE WITNESS: Can you repeat
17 the question again?

18 MR. BOGLE: Sure.

19 BY MR. BOGLE:

20 Q. You also would have been
21 involved in interactions with customers in
22 your geographic area as to the changes that
23 were being implemented by way of the CSMP,
24 true?

25 A. I think from time to time. I

1 mean, I wasn't the primary contact for
2 customers, but would have had interaction
3 with them as well.

4 Q. Okay. And part of what was
5 provided to McKesson customers when the CSMP
6 was implemented was sort of a guide for them
7 as to the basics of the program, right?

8 MS. HENN: Objection to form,
9 lacks foundation.

10 A. I don't remember a specific
11 guide for customers.

12 BY MR. BOGLE:

13 Q. Okay. All right. Let me hand
14 you what I'm marking as Exhibit 5, which is
15 1.2141, and that's MCKMDL00543554.

16 (McKesson-Cavacini Deposition
17 Exhibit 5 marked.)

18 BY MR. BOGLE:

19 Q. All right, Mr. Cavacini. I
20 want to orient you to the document first.
21 You see an e-mail on the first page followed
22 by several pages thereafter.

23 You see that?

24 A. I do.

25 Q. Okay. And the e-mail is from a

1 Donald Walker, March 31, 2008, titled
2 Controlled Substances Monitoring Program
3 Review.

4 Do you see that title?

5 A. I do, yes.

6 Q. Do you want to look at it for a
7 second? I just want to make sure you're
8 focused on my question, so if you want to
9 look at it, just let me know.

10 A. I'm just taking a second to --

11 Q. Sure. Just let me know when
12 you're ready to talk about it.

13 A. Okay.

14 Q. Okay. I want to look at the
15 e-mail first. Mr. Walker says: Paul -- I
16 think that refers to a Paul Julian.

17 What was Mr. Julian's role at
18 that point in time at McKesson?

19 A. I can't say for sure what his
20 role was in 2008. For the most of my career,
21 I knew Paul as our executive vice president
22 and president of our distribution businesses.

23 Q. Okay. And he says there: We
24 are in the process of implementing our new
25 enhanced program to monitor controlled

1 substance sales. The customer communication
2 centers around a letter from John and Mark
3 which will accompany an information packet
4 mailed to customers which describes the
5 program. The respective sales teams will
6 then follow up with customers as required.

7 Do you see that?

8 A. I do.

9 Q. So in 2008, you would have been
10 responsible for a sales team then that would
11 have followed up with customers as indicated
12 here, right?

13 A. Yes.

14 Q. Okay. And he continues on: We
15 have begun the process of bringing the
16 systems solution online with the roll-out
17 complete by the end of May. By design, we
18 intend to get this communication in the hands
19 of our customers before any public
20 announcement is made on the settlement
21 emphasizing that this is an enhancement to
22 existing processes.

23 Do you see that?

24 A. I do.

25 Q. Okay. And then this is a --

1 we're talking about a settlement here. This
2 is around the same time as the settlement
3 agreement we just reviewed, right?

4 MS. HENN: Objection to form,
5 asks for speculation.

6 A. It's around the same time of
7 the settlement we just reviewed, so I can't
8 say for certain if it's referencing the same
9 one.

10 BY MR. BOGLE:

11 Q. Okay. Are you aware of any
12 other settlements in or around early 2008
13 other than the one we just looked at,
14 McKesson was involved in?

15 A. Don't know that I'm aware of
16 any.

17 Q. Okay. Then it says: The
18 attached is the final version of the letter
19 and packet. This has been reviewed and
20 approved by legal, John and Mark.

21 Do you see that?

22 A. I do.

23 Q. Okay. Then I want to look at
24 the packet here. So I actually want to start
25 at page .4.

1 A. As a final step, they were
2 requesting Paul's approval. Okay.

3 Q. Are you with me, .4?

4 A. I am.

5 Q. Okay. The middle of the page
6 on .4, see the section titled Program
7 Details?

8 A. Program Details, yes.

9 Q. It says there: All U.S. drug
10 wholesalers have always been required by the
11 DEA to monitor the ordering of controlled
12 substances. Those regulations have not
13 changed, but the extent to which wholesalers
14 are now required to monitor and enforce the
15 legitimate use of controlled substances has.
16 While we trust and respect our customers'
17 integrity and professionalism, we must
18 cooperate with these mandates from the DEA.

19 Do you see that description?

20 A. I do see where it says that.

21 Q. Okay. And this is similar to
22 what we saw a few minutes ago, that -- the
23 description that the regulations had not
24 changed around the time in 2008, right?

25 MS. HENN: Objection to form.

1 A. I think the statement states
2 that those regulations have not changed.

3 BY MR. BOGLE:

4 Q. Okay. And if you go down
5 towards the bottom of that page, there's some
6 dashes. I want to look at the next-to-last
7 dash there.

8 It says: Customers will be
9 alerted in advance of meeting or exceeding
10 their thresholds.

11 Do you see that?

12 A. I see where it says that.

13 Q. And so we're clear, as part of
14 the CSMP, there were thresholds for
15 controlled substances, including opioids,
16 that were established for each customer,
17 right?

18 MS. HENN: Objection to form,
19 lacks foundation.

20 A. I'm aware that we have
21 thresholds for customers, yes.

22 BY MR. BOGLE:

23 Q. Right. And that was part of
24 the CSMP that was implemented in 2008,
25 those -- the introduction of thresholds,

1 right?

2 MS. HENN: Objection to form,
3 lacks foundation.

4 A. It is a component of the CSMP,
5 yes.

6 BY MR. BOGLE:

7 Q. Okay. And the concept of
8 alerting customers in advance of meeting or
9 exceeding their thresholds, you have
10 knowledge and understanding that that's
11 something that was done as part of the CSMP,
12 right?

13 When a customer was getting
14 close to getting -- meeting their threshold
15 for a controlled substance, they were alerted
16 or advised of that, right?

17 A. I think for a period of time I
18 am aware that we made some proactive calls to
19 customers as they were approaching their
20 threshold.

21 Q. Okay. And then the next -- the
22 dash below that says: Customers can apply
23 for threshold adjustments if their business
24 is changing or they anticipate needing to
25 place a larger order.

1 Do you see that?

2 A. I do see where the document
3 says that.

4 Q. And that's describing generally
5 the threshold change request process, that a
6 customer could ask to increase their
7 threshold if they were bumping up against it
8 for a controlled substance, right?

9 A. I believe it does, yeah. We
10 had a process in place where customers had a
11 shift in their business or some material
12 change, their needs were changing, they could
13 request an increase to their threshold,
14 called a TCR.

15 Q. And the concept of the
16 threshold warnings that were provided to
17 customers, that was to ensure that the
18 customers wouldn't get any disruption in
19 their supply of controlled substances, right?

20 MS. HENN: Objection to form.

21 Go ahead.

22 A. My understanding was more about
23 patient care, that, you know, taking an
24 action, stopping the shipment of an order,
25 could potentially have an impact to patients.

1 And I think my understanding again was in the
2 spirit of knowing our customer and trying to
3 understand what was happening in their
4 business that was driving them to approach
5 the threshold.

6 BY MR. BOGLE:

7 Q. The idea under the CSMP, and
8 specifically with the warning process and
9 threshold change request, was to make sure
10 that you had a system in place, but that it
11 still remained business as usual for your
12 customers, right?

13 MS. HENN: Objection to form,
14 asked and answered.

15 A. No, I don't agree.

16 BY MR. BOGLE:

17 Q. Okay. Well, let's look first
18 at page .5, on the top is a section titled
19 Notification system.

20 Do you see that?

21 A. I do, yes.

22 Q. It says: Your McKesson
23 ordering system conducts real-time monitoring
24 of controlled substance purchases according
25 to DEA base code.

1 Then it says: McKesson's CSMP
2 works with your regular ordering system
3 processes to deliver communications in plenty
4 of time for your pharmacy to take corrective
5 action, helping head off any potential
6 disruptions in supply.

7 Do you see that?

8 A. I do.

9 Q. That notification system is
10 going back to that threshold warning concept
11 we just talked about, right?

12 A. I think it was described as an
13 alert.

14 Q. Right. A warning or an alert,
15 right?

16 A. I don't know that the terms are
17 interchangeable. Making customers aware.

18 Q. Okay. And as it's stated here,
19 the purpose of which being to ensure that you
20 could help head off any potential disruptions
21 in supply.

22 That's what's stated there,
23 right?

24 A. I do see what's stated there,
25 yes.

1 Q. Okay. And if we go down to --
2 you see there's like a dark gray box towards
3 the bottom of this page. Do you see where
4 I'm at?

5 A. I do.

6 Q. It says there: McKesson values
7 you and your business and is committed to
8 working closely with you to ensure that your
9 pharmacy continues to be successful. This
10 program addresses the DEA's requirements to
11 ensure controlled substances are used in the
12 way they were intended, but it also ensures
13 that you as a McKesson customer can continue
14 with business as usual.

15 You see that?

16 A. I do see where it says that.

17 Q. Okay. And so this is what was
18 being conveyed at least to McKesson customers
19 in 2008, right?

20 MS. HENN: Objection to form.

21 A. I can't say for certain. I
22 don't remember seeing this document in this
23 packet. We're going back 12 years. As I
24 kind of read in the cover letter, it was
25 all -- Don was seeking Paul's review and

1 approval. I'm not sure if he gave it. I'm
2 not sure if these documents went out in this
3 form.

4 BY MR. BOGLE:

5 Q. Okay. Well, we can agree
6 that's what's stated here in what I just
7 read, right, that customers were to be
8 advised that the program addresses DEA's
9 requirements to ensure controlled substances
10 are used in the way they were intended, but
11 it also ensures that you as a McKesson
12 customer can continue with business as usual.

13 That's what the document
14 states, right?

15 MS. HENN: Objection to form,
16 asked and answered.

17 A. That is what the document
18 states.

19 BY MR. BOGLE:

20 Q. Okay. And there's actually an
21 FAQ section here as well, which is on
22 page .2, so if we can go there. You see this
23 is titled McKesson Controlled Substances
24 Monitoring Program, FAQs for Pharmacies.

25 Do you see that?

1 A. I do, yes.

2 Q. Number 3, there's an FAQ, which
3 I understand is a frequently asked question,
4 right?

5 A. Also my understanding as well.

6 Q. Okay. Number 3 says: How will
7 this affect my pharmacy business?

8 And there it says: There
9 should be no significant impact to your
10 business. The system monitors purchases of
11 your controlled substances and compares them
12 to your thresholds. We've taken care to
13 set -- we've taken care to set your threshold
14 based on your controlled substance order
15 history, and have put a program in place to
16 give you plenty of notice if you're close to
17 exceeding your threshold for a given product.

18 Do you see that?

19 A. I do see where it says that.

20 Q. And again, this was a proposed
21 response to what McKesson viewed as a
22 potentially frequently asked question by a
23 pharmacy customer, right?

24 MS. HENN: Objection to form,
25 lacks foundation.

1 A. It's part of the FAQ document,
2 and as I read it, you know, and I think back
3 to our time in this program, we were trying
4 to set the thresholds based on their
5 historical practice.

6 If their business didn't change
7 materially, they should not feel the impact
8 of the thresholds, and if there was changes
9 in their business, we were going to work with
10 them to try and understand what was going on.

11 BY MR. BOGLE:

12 Q. So we'd already seen a document
13 from the DEA in 2006 that references
14 prescription drug abuse problem. This is now
15 in 2008.

16 Do you think it should have
17 been business as usual for McKesson customers
18 as it pertained to opioids?

19 MS. HENN: Objection to form.

20 A. I think it depends on the
21 customer and their business. As I think back
22 to my experiences during that time frame, I
23 think we were making many changes to our
24 business, and business as usual isn't how I
25 would describe it.

1 BY MR. BOGLE:

2 Q. And quite frankly, in 2008, at
3 this point in time McKesson is about to enter
4 into the settlement agreement we just looked
5 at, it, quite frankly, shouldn't be business
6 as usual for McKesson or its customers as it
7 pertains to opioids, should it?

8 MS. HENN: Objection to form.

9 A. I think it depends on the
10 customer and the circumstances. You know,
11 the vast majority of our customers and
12 pharmacies and healthcare providers in
13 general probably didn't see any change.

14 BY MR. BOGLE:

15 Q. Okay. And the document we've
16 looked at here, does it anywhere convey that
17 some customers will experience circumstances
18 that are not business as usual?

19 MS. HENN: Objection to form.

20 A. When I look at the letter
21 that's also part of the packet dated March
22 31st.

23 BY MR. BOGLE:

24 Q. Can you show me what page
25 you're on?

1 A. .7.

2 Q. Okay. Go ahead.

3 A. The DEA is requiring that
4 McKesson and wholesalers play an expanded
5 role in monitoring the ordering and
6 distribution -- McKesson has responded by --

7 MS. HENN: Let's make sure the
8 court reporter --

9 MR. BOGLE: Yeah. Either read
10 to yourself --

11 A. I'm reading the second
12 paragraph there.

13 MS. HENN: You can read it out
14 loud. I just want to make sure the
15 court reporter can catch what you're
16 saying.

17 A. The DEA is requiring that
18 McKesson and all wholesaler distributors play
19 an expanded role in monitoring the order and
20 distribution of substances. McKesson has
21 responded by implementing a new Controlled
22 Substances Monitoring Program, going to be
23 rolled out in the next 90 days.

24 The closing sentence that says:
25 Your McKesson representative will be

1 following up to provide more details about
2 this new program and answer any questions.

3 You know, I took that there
4 would be changes.

5 BY MR. BOGLE:

6 Q. This talks about the CSMP,
7 which is the very program we just looked at
8 as indicating would not do anything but
9 ensure that customers operate with business
10 as usual, right?

11 MS. HENN: Objection to form.

12 BY MR. BOGLE:

13 Q. The same program, isn't it?

14 MS. HENN: Mischaracterizes the
15 document.

16 A. I mean, I do see where that
17 statement was used in the document, but I
18 think the whole creation of this document,
19 having a FAQ for our sales team, trying to
20 prepare our sales, our customers, leads me --
21 and my recollection under that time that
22 there were changes and it was going to be
23 impactful, and we needed to communicate.

24 You know, if it was business as
25 usual, why create this?

1 BY MR. BOGLE:

2 Q. Well, why tell customers it was
3 going to be business as usual if that wasn't
4 the case?

5 MS. HENN: Objection to form,
6 calls for speculation.

7 A. I don't know. I didn't write
8 the document. Again, I don't remember this
9 document going out in this form. I can't say
10 if it did or it didn't, if further changes
11 were made. It's hard for me to say why it
12 was drafted this way.

13 BY MR. BOGLE:

14 Q. Prior to the implementation of
15 the CSMP in 2008, did you -- actually, strike
16 that.

17 From 2002 to 2007, while you're
18 working as part of the sales force, during
19 that window of time, did you get any training
20 as far as due diligence that you should be
21 conducting as a sales force as it pertained
22 to opioids?

23 A. I don't recall specific
24 training. You know, I was aware that we had
25 some responsibilities to help, you know,

1 really around the legitimacy of that
2 pharmacy, and I do remember that as my time
3 as a sales executive, when speaking to
4 prospective customers or considering a
5 relationship with prospective customers, one
6 example is we would have to get copies of
7 their board pharmacy license and their DEA
8 license, and those would be turned over to
9 our due diligence and customer onboarding
10 teams.

11 So -- but specific training, I
12 don't recall.

13 Q. Okay. So what you recall
14 from '02 to '07 was getting basically the
15 licensures from the pharmacies so that you
16 could pass those on to the group of people
17 that reviewed onboarding?

18 A. That was one thing that I
19 remember, yes.

20 Q. Okay. Anything else that you
21 recall in that time frame due diligence-wise
22 that the sales force was asked to do?

23 A. Specific to controlled
24 substances, no, but we do have shared
25 principles at McKesson, and those are founded

1 in integrity, accountability and respect.
2 And there was always a responsibility about
3 many of our customers' businesses in many
4 areas that if we were aware of something, to
5 bring it forward, you know.

6 Q. Do you recall in the 2002 to
7 2007 time frame that you ever personally made
8 anyone aware at McKesson that you had
9 concerns about a customer potentially
10 diverting opioids?

11 A. No, I can't recall that I did.

12 Q. I'm going to hand you now what
13 I'm marking as Exhibit 6, which is 1.574, and
14 that's MCKMDL00000021.

15 (McKesson-Cavacini Deposition
16 Exhibit 6 marked.)

17 BY MR. BOGLE:

18 Q. Okay. Mr. Cavacini, what I
19 handed you here as Exhibit 6 is a copy of the
20 Controlled Substance Monitoring Program, and
21 if you see at the bottom there's a date of
22 8/24/2011 on it, bottom right, first page.

23 Do you see that?

24 A. Bottom right, first page. I
25 do. It's a copy of a copy, 8/24/2011.

1 Q. Yeah, the quality isn't the
2 greatest. That's why I wanted to point that
3 out to you.

4 A. Thank you.

5 Q. Okay. So you're familiar --
6 and we're going to go through a few aspects
7 of this, but before we do, you're familiar
8 with having reviewed copies of the Controlled
9 Substance Monitoring Program over time,
10 right? You've reviewed them before.

11 A. I believe I have, yeah. I
12 mean, I think most of my exposure has been to
13 summaries of the Controlled Substance
14 Monitoring Program, often prepared by our
15 regulatory teams in more of a PowerPoint
16 format, but I have seen the document.

17 Q. Okay. And in 2011, August 2011
18 specifically, you would have been part of the
19 McKesson U.S. Pharma sales force, right?

20 A. I believe I was a vice
21 president of sales at that time, yes.

22 Q. Right. Okay.

23 Let's take a look at page .9 of
24 this document. You see there's a section
25 about a third of the way down the page that

1 says 2.2.2, Level 1 Review - All Remaining
2 Customers.

3 Do you see that section?

4 A. I do.

5 Q. Okay. And Level 1 reviews,
6 first of all, would be triggered once a
7 customer reached their threshold in a given
8 month for a controlled substance, right?

9 MS. HENN: Objection to form,
10 lacks foundation.

11 A. I'm not familiar with all of
12 the components of a Level 1 review and that
13 term, but it seems to indicate that it is
14 required for every threshold incursion.

15 BY MR. BOGLE:

16 Q. Right, that's the first
17 sentence. It says: A Level 1 review is
18 required for every threshold incursion.

19 Do you see that?

20 A. Yeah.

21 Q. I'm not going to go into great
22 detail on Level 1 reviews. I want to focus
23 on the sales force side of it.

24 During this time frame, for
25 example, in 2011, the sales force was a

1 participant in the Level 1 review process,
2 right?

3 A. Possibly, but I don't think
4 exclusively or always.

5 Q. Yeah. I'm not -- let me make
6 sure my question is clear.

7 I'm not saying the sales
8 representative was responsible for completing
9 all aspects of Level 1 review. My question
10 was simply: The sales representative for a
11 given customer would be a participant in the
12 Level 1 review process, true, under the CSMP?

13 MS. HENN: Objection, asked and
14 answered.

15 A. My recollection of the CSMP is
16 that the reviews were typically done by DC
17 management or our regulatory affairs teams.
18 But I guess it's possible they could include
19 sales in some of that or ask for help, if
20 they were unable to complete any part of it.
21 But I don't know that it was contingent upon
22 sales participation in the Level 1 review.

23 BY MR. BOGLE:

24 Q. Okay. Let's take a look at an
25 aspect of this here.

1 You see the section that says
2 "How to do" under Level 1 review?

3 A. I do.

4 Q. Okay. And I'm looking at the
5 third bullet point, which is describing an
6 evaluation as part of a Level 1 review. The
7 third bullet point says: Contact the
8 appropriate sales representative to determine
9 reasoning behind the sales.

10 Right? You see that?

11 A. I do see where it says that,
12 but in the first sentence it says: DC
13 management or designee will contact the
14 customer upon attempted threshold -- so, you
15 know, my recollection is they might also
16 incorporate the salesperson in that or help
17 in that, but it was -- again, as I think
18 back, it was often done without sales
19 involvement. It was DC management.

20 Q. Okay. So let me make sure I
21 understand then.

22 So while you were -- as part of
23 the McKesson sales force, which really
24 extended all the way until 2017, right? 2002
25 to 2017?

1 A. I lead large parts of our
2 organization now, but I don't have a
3 full-time selling responsibility.

4 Q. Right. Let me rephrase the
5 question because I think we're agreeing with
6 each other.

7 So from 2002 to 2017, to
8 August 2017, you were part of the sales
9 organization at McKesson, right?

10 A. My responsibilities as
11 senior -- I had operating responsibility, I
12 had responsibilities beyond sales in my
13 senior vice president role, my VP/GM role.
14 They were leaders of salespeople, but I
15 wouldn't consider it part of the sales
16 organization.

17 Q. Okay. Let me ask you this:
18 2002 to 2005 as a sales executive, you're
19 part of the sales force at McKesson
20 U.S. Pharma, correct?

21 A. Correct.

22 Q. November 2005 to March 2009 as
23 district sales manager, you're part of the
24 McKesson U.S. Pharma sales force, correct?

25 A. I had selling responsibilities

1 as a district sales manager, correct.

2 Q. Vice president of sales,
3 March 2009 to January 2012, you're part of
4 the McKesson overall sales force, correct?

5 A. I had selling responsibility,
6 was part of the sales force. The number I
7 gave you earlier about 250 people, I'm
8 including vice presidents of sales.

9 Q. Sure. And I think what you
10 were referencing here was your time in
11 Memphis when you were vice president and
12 general manager as being less involved in the
13 sales process, true?

14 A. I would say that's where I
15 began to take on additional responsibilities
16 outside of sales operating responsibility and
17 I would not include that number in the number
18 I gave you earlier for the sales
19 organization.

20 Q. Okay.

21 A. But I led salespeople; they
22 reported to me or up through me.

23 Q. Understood.

24 And then from April 2015 to
25 August 2017 when you were senior vice

1 president in the northeast region, you were
2 overseeing a sales force then too, right?

3 A. Similar to the general manager.
4 I had broad responsibilities, including
5 overseeing the sales organization.

6 Q. Right. So I'm taking a look at
7 from January '02 to August 2017, during that
8 entire time period, do you recall the sales
9 force ever being involved in reviewing
10 customer purchases for due diligence
11 perspective to determine if they were
12 appropriate?

13 MS. HENN: Objection to form,
14 vague.

15 A. I remember them working
16 potentially collaboratively with our
17 district -- with our DC management teams and
18 our regulatory affairs teams, but they never
19 had oversight or authority. They might be a
20 conduit to gather information or make a
21 connection or to provide additional
22 information, but...

23 BY MR. BOGLE:

24 Q. Because oftentimes the sales
25 representative responsible for a customer

1 would be the most knowledgeable about that
2 customer's business, right?

3 MS. HENN: Objection to form.

4 A. I think they would have a
5 perspective.

6 BY MR. BOGLE:

7 Q. Okay. Because they're the
8 people who frequently actually meet with the
9 customers in person, right?

10 A. That's one of our expectations,
11 yeah, that they are out meeting with the
12 customers.

13 Q. Right. That's how you make
14 sales, right? You go out and talk to people
15 and you meet with people and you try to close
16 a deal, right?

17 A. I think our salespeople have
18 broad responsibilities. We believe that a
19 face-to-face interaction is often a way to
20 help advance some of our joint initiatives,
21 things that we might want to do with our
22 customers, the value of our sales force.

23 Q. Right. And that's how you keep
24 customers too, right, is you continue to
25 interact with them over time as a sales force

1 to make sure that you are actively involved
2 in meeting their needs, right?

3 A. It's a component. I think we
4 keep customers by providing world-class
5 service and meeting their expectations every
6 day. We talk about we earn our customers'
7 business every day.

8 Q. Okay. And when the CSMP was
9 launched in 2008, part of the responsibility
10 of the sales force when a new customer was
11 brought on board thereafter was to introduce
12 them to the concepts of the CSMP, right?

13 MS. HENN: Objection to form.

14 A. You know, I remember our
15 salespeople's responsibility and being part
16 of the program, you know, that started with a
17 customer questionnaire that they might
18 complete with the customer. The customer
19 filled it out and signed it, but it was often
20 done in conjunction with the sales
21 representative and begin to, you know, make
22 sure that the customer was aware of our
23 program.

24 BY MR. BOGLE:

25 Q. Okay. So, for example, we're

1 looking at the 2011 version of the CSMP, if
2 you go to page .11 in the document. You see
3 middle of the page there's a number 3, New
4 Customer Onboarding Process.

5 Do you see that?

6 A. I do.

7 Q. And under 3.1, it says:

8 Introducing new McKesson customers to
9 Controlled Substance Monitoring.

10 Do you see that reference?

11 A. I do.

12 Q. And under "How to do," it says:

13 During the customer onboarding process, the
14 McKesson sales representative will introduce
15 the CSMP.

16 Do you see that?

17 A. I do.

18 Q. Is that consistent with, from
19 2008 to 2017, what you understand the sales
20 force's role to be as it pertained to
21 onboarding and informing customers of the
22 CSMP?

23 A. The bullet point below it
24 references the questionnaire, and I think
25 that's where most of my understanding and

1 experience has been with the -- with the
2 RSMs.

3 I think our need to educate
4 customers on the CSMP has evolved over time,
5 and whether we're still using the FAQ and the
6 overview and the communication letter, I
7 can't say for certain. I mean, these have
8 become -- customers are well aware of the
9 existence of these programs and that
10 wholesalers have.

11 Q. Okay. So while -- for example,
12 during around 2011, do you recall that being
13 the practice for your sales force as when
14 they're onboarding a new customer, to advise
15 them of the CSMP, provide the basics of the
16 program to them?

17 MS. HENN: Objection to form,
18 compound.

19 A. I don't know exactly what I
20 remember from 2011.

21 BY MR. BOGLE:

22 Q. Okay. But we can agree that
23 certainly sales representatives under the
24 CSMP had to have working knowledge of the
25 program, right?

1 MS. HENN: Objection to form,
2 vague.

3 A. I agree that our sales force
4 was required to have an understanding of our
5 program, their responsibilities under it and
6 be able to participate in the communication
7 with our customers around it.

8 BY MR. BOGLE:

9 Q. And the responsibilities of
10 sales representatives under the CSMP included
11 looking for suspicious activity with the
12 customer, right?

13 A. I've been part of conversations
14 and had conversations with salespeople that
15 they are a significant part of our program
16 and are often going to be in a position to
17 observe potential activity that could be
18 suspicious and to bring that forward to
19 members of our regulatory affairs team.

20 Q. And you expect the sales force
21 to do that, right? If they see something
22 that's suspicious of potential diversion, you
23 expect them to report that, don't you?

24 A. If they see -- you know, as I
25 stated earlier going back to 2002, part of

1 our shared principle is if they see anything
2 of concern that's unusual relative to CSMP or
3 not, I would expect my team to bring it
4 forward.

5 Q. And we're going to talk about
6 this a little more in a few minutes, but
7 there have been bonus and incentive plans in
8 place at McKesson for the entire time you
9 were involved in the sales force, and
10 including up to today, right?

11 MS. HENN: Objection to form.

12 A. We have a sales incentive plan
13 for our field sales teams. Different members
14 of the team have been covered by that
15 differently at points in time, but there is a
16 sales incentive plan.

17 BY MR. BOGLE:

18 Q. Right. Which components of
19 that are commissions that can be made,
20 portions of that are additional bonuses that
21 can be received, right?

22 MS. HENN: Objection to form,
23 lacks foundation.

24 A. There are parts of the
25 incentive plan that are tied to different

1 components. Some is for products and
2 services; some is for account performance.

3 BY MR. BOGLE:

4 Q. And the whole concept of these
5 incentive plans is you want to motivate your
6 sales force, right? That's the whole idea
7 behind the sales incentive plan, right?

8 A. I've described it that we want
9 to align incentives with the right behaviors
10 that are --

11 Q. Right.

12 A. So people are rewarded for
13 performance.

14 Q. Right. You want to reward them
15 for doing the right thing, the things that
16 McKesson wants them to do, right?

17 A. Not everything we want them to
18 do is clearly spelled out in our incentive
19 plans, but key behaviors, initiatives, things
20 that we derive value for us and our customers
21 are often covered, and we compensate them for
22 it.

23 Q. And things that are important
24 to McKesson for their sales force to do --
25 strike that.

1 The most important things that
2 McKesson wants its sales representatives to
3 do, they compensate them for it, right? They
4 provide them bonuses or incentives to
5 encourage them to do it.

6 MS. HENN: Objection to form.

7 A. I don't agree necessarily, no.

8 BY MR. BOGLE:

9 Q. Okay. Can you think of
10 something that -- while you've been at
11 McKesson, that you view as an extremely
12 important concept that is not awarded --
13 rewarded by a bonus, commission or other
14 incentive, that's a top-line goal that you
15 want your sales reps to achieve that you
16 don't compensate them for?

17 MS. HENN: Objection to form.

18 A. To operate with integrity.

19 BY MR. BOGLE:

20 Q. Okay. So you don't pay your
21 sales force to operate with integrity?

22 A. Our salespeople are compensated
23 by base salary and incentive plans, but I
24 believe your question was what's specifically
25 called out. I mean, we have an expectation

1 that people are going to operate with
2 integrity. That's not called out in the
3 compensation plan.

4 Q. When you see significant acts
5 of integrity, is that rewarded in any way for
6 your sales force?

7 A. We have other areas of
8 recognition. You know, when people go above
9 and beyond, I've personally sent a
10 handwritten note.

11 Q. Any other way that they're
12 compensated for showing significant
13 integrity?

14 A. It's a core expectation. I
15 don't believe we have to provide financial
16 incentive to do that.

17 Q. Okay. Well, for example, with
18 the sales incentive plans, the time you've
19 been in the company, 2002 to present, has
20 there ever been an incentive provided to
21 sales -- the sales force to report suspicious
22 activity of customers as it relates to
23 controlled substances? Has that ever been a
24 component of the plan?

25 MS. HENN: Objection to form,

1 compound, vague.

2 A. I'm not aware that it's been a
3 specific segment of our sales incentive
4 plans. I think it's been a component of some
5 performance documents.

6 BY MR. BOGLE:

7 Q. What specific incentives would
8 you refer me to that the sales force has been
9 provided for reporting suspicious activity
10 related to controlled substances?

11 MS. HENN: Objection to form,
12 lacks foundation.

13 A. I don't know that I -- I think
14 I stated that I'm not aware that there's ever
15 been a specific component of our incentive
16 plan that called out an expectation to report
17 suspicious activity of controlled substances.

18 BY MR. BOGLE:

19 Q. Okay. So, for example, let me
20 give you this as an example.

21 Can you -- has there ever been
22 a time where the sales force has been
23 instructed, hey, if you report suspicious
24 activity of a customer related to controlled
25 substances and we confirm that it was

1 suspicious, we're going to give you a \$500
2 bonus? Anything like that you can think of?

3 A. No.

4 Q. Okay.

5 A. But I have written a
6 performance document that, under workforce
7 behaviors, adhering to and supporting our
8 regulatory responsibilities is a clear
9 expectation.

10 Q. When did you draft that?

11 A. I would say during my period of
12 time as a vice president of sales and a
13 general manager. I can't say specifically.
14 I'm pretty confident it was a component of
15 mine from time to time, and if it wasn't, I
16 knew clearly the expectation, and I shared
17 that with my team.

18 Q. And that component you're
19 saying included reporting suspicious activity
20 related to controlled substances?

21 A. Again, I believe I phrased it
22 as executing our regulatory responsibilities.

23 Q. Okay. So going back, because
24 McKesson does provide financial incentives to
25 sales representatives, for example, when they

1 increase profitability for the company,
2 right?

3 A. You know, our compensation plan
4 today, you know, it's a complex plan. There
5 are components that could be tied to customer
6 profitability. I don't think a core
7 component of our plan today is directly tied
8 to profitability.

9 At different periods of time
10 we've had different measurements that were
11 attempting to get at that, but...

12 Q. Okay. In -- all right. We'll
13 look at the plans here in a minute.

14 A. Okay.

15 MS. HENN: And we've been going
16 another hour, so this might be a good
17 time for a five-minute break.

18 MR. BOGLE: That's fine.

19 THE VIDEOGRAPHER: We're off
20 the record at 11:13 a.m. This
21 concludes Disc 1.

22 (Recess taken, 11:13 a.m. to
23 11:25 a.m.)

24 THE VIDEOGRAPHER: We are back
25 on the record, 11:25 a.m., beginning

1 of Disc 2.

2 BY MR. BOGLE:

3 Q. Mr. Cavacini, we had started
4 talking a little bit about sales incentive
5 plans and so I wanted to talk to you about
6 that more specifically. So I'm going to hand
7 you what I'm marking as Exhibit 7, which is
8 1.2140, and it's Bates number MCKMDL00642352.

9 (McKesson-Cavacini Deposition
10 Exhibit 7 marked.)

11 BY MR. BOGLE:

12 Q. Okay. Mr. Cavacini, see here
13 there's an e-mail on the first page titled
14 RSM Compensation Call.

15 Do you see that at the top?

16 A. I do.

17 Q. Okay. And sent from a Brian
18 Ferreira on March 26th, 2006.

19 Do you see that?

20 A. I do.

21 Q. I'm not going to go through all
22 the recipients here, but you see that you're
23 in the cc line, correct?

24 A. Yes, I do.

25 Q. Okay. And I want to take a

1 look at some aspects of this PowerPoint
2 that's attached to this, so if we go to
3 page .2, you see there it's titled FY07 Sales
4 Compensation Plan, Retail Sales Managers,
5 dated March 23, 2006.

6 Do you see that?

7 A. I do.

8 Q. Okay. And FY07, would that be
9 fiscal year?

10 A. Correct.

11 Q. Okay. And retail sales
12 manager, that's one of the positions within
13 the McKesson U.S. Pharma sales force at this
14 point in time in 2006, right?

15 A. Yes.

16 Q. Okay. So let's go to the next
17 page, page .3. It says RSM - Design
18 Principles. And so would this be the design
19 principles for the incentive plan for retail
20 sales managers for this fiscal year? Is that
21 what this is summarizing?

22 MS. HENN: Objection to form,
23 lack foundation.

24 A. No. I didn't draft the
25 document, but it seems to indicate that four

1 components listed here were some of the
2 principles of the plan.

3 BY MR. BOGLE:

4 Q. Okay. Number 1 says: Focus on
5 generics.

6 Do you see that?

7 A. I do.

8 Q. Now, generics are generally the
9 most profitable aspect of the pharmaceutical
10 business at McKesson, right? The profit
11 margins are greatest?

12 MS. HENN: Objection to form,
13 vague.

14 A. My understanding is that
15 generics are an important component of our
16 business and drive significant contribution,
17 yes.

18 BY MR. BOGLE:

19 Q. Right. And a significant
20 reason for that is that they have higher
21 profit margins than their branded
22 counterparts for McKesson, right?

23 A. I mean, they may have higher
24 margins. They're often less expensive, so my
25 understanding is that adoption of generics is

1 good for our customers and potentially good
2 for our business as well.

3 Q. Okay. And good for your
4 business because they offer greater
5 profitability options, right?

6 A. Again, we think about
7 profitability as margin and dollars, and
8 since they're less expensive, not always, but
9 generally, yes, I think the generics are an
10 important part of our business and as
11 indicated by the fact that they were listed
12 here first.

13 Q. Okay. Number 2 on this list
14 is: Emphasize new accounts.

15 Do you see that?

16 A. I do.

17 Q. Number 3 is: Continue emphasis
18 on net sales and customer contribution.

19 Do you see that?

20 A. I do.

21 Q. What does customer contribution
22 mean in this context?

23 A. It's listed on page 7. My
24 recollection of customer contribution,
25 there's not a lot of detail in this summary

1 document that I can see, but, you know, it
2 was a factor of how the mix of the customer
3 between brand and generics, the -- I guess
4 the discount that we were providing to that
5 customer was a member of -- measure of
6 customer profitability. It was a loose
7 attempt to get to that.

8 Q. Okay. And going back to
9 number 3 here on the list: Continue to
10 emphasize net sales. So at least as to
11 fiscal year 2007, net sales was a factor in
12 evaluating the sales incentives provided to
13 retail sales managers, right?

14 A. I'm sorry, I made a mistake and
15 was reading the document as you were talking.

16 The question was customer
17 retention --

18 Q. No, no, no, I'm sorry. Let me
19 rephrase it. I think you're looking at a
20 different point. So looking at number 3, the
21 emphasis on net sales that's referenced
22 there, so this indicates that for the fiscal
23 year 2007, net sales was a factor being
24 evaluated for sales incentive program
25 purposes, correct?

1 A. Seems to indicate that, and
2 also on page .6.

3 Q. Right. Right.

4 And then looking at number 4,
5 it says: Reward customer retention, which
6 means simply that sales representatives would
7 be rewarded if they were able to keep
8 existing McKesson customers in their
9 territory, right?

10 A. If customers stayed with us.

11 Q. Right. Right.

12 Then if you go to page .4,
13 there's an RSM - Plan Overview, and it says:
14 Support two strategic priorities.

15 The first bullet point says:
16 Dominate generics.

17 Do you see that?

18 A. I do.

19 Q. Okay. And then the second
20 says: Become #1 in independent market share.

21 Do you see that?

22 A. I do.

23 Q. And independent market share is
24 what's being referred to there as the
25 independent pharmacies, right?

1 A. It's hard for me to say.

2 Reading this document, I would take it as
3 being independent small chain customers or
4 ISMC segment.

5 Q. And talking about market share,
6 that's sort of comparing yourself to the
7 other distributors, correct?

8 A. My understanding of the market
9 share is of the total market what percentage
10 of it you have relative to your competitors.

11 Q. Right, the distribution market,
12 right, for independent pharmacies.

13 A. Again, I don't know what Brian
14 was referencing here. We're primarily a
15 pharmaceutical distributor. As I've seen our
16 share referenced from time to time it's
17 around our distribution business.

18 Q. Right. A couple more points
19 here I want to look at. So let's go to
20 page .12.

21 A. .12.

22 Q. I first want to look at the
23 section that says Dominate Generics. We
24 talked about that term just a minute ago. Do
25 you recall talking about that just a moment

1 ago with me?

2 A. It was referenced on the slide.

3 Q. Right. And this provides more
4 description on that. It says: Over the next
5 several years, we will see many blockbuster
6 branded drugs go off patent, resulting in
7 significant generics launches. As you know,
8 generics have become a significant profit
9 opportunity providing attractive margins for
10 our customers as well as McKesson.
11 Therefore, dominating generics will be
12 crucial to our success.

13 Do you see that?

14 A. I do see where that's written.

15 Q. Okay. Does that refresh your
16 recollection about profit margins for
17 McKesson being a factor in dominating the
18 generic marketplace?

19 MS. HENN: Objection to form.

20 A. I think it aligns with how I
21 answered the question. They were important
22 for us and important for our customers. They
23 were...

24 BY MR. BOGLE:

25 Q. Okay. And now, for sales

1 representatives, how specifically were they
2 instructed around this time frame to sell
3 generic products specifically?

4 MS. HENN: Objection to form,
5 calls for speculation.

6 A. As I think back to my time in
7 the field and in these roles, though I never
8 held the role of RSM, I lead a team of RSMs,
9 you know, it was about garnering a customer
10 share of their generics, helping them
11 understand that when a branded product went
12 generic, that the generic alternative was
13 available and the potential benefit that that
14 could have for patients and their business,
15 and as a result, ours.

16 And we measure today and have
17 really always talked about, you know, kind of
18 share of wallet in a customer and making sure
19 that we are getting, as their primary
20 distributor, our fair share.

21 And I believe that's how we
22 incent, and if we look at the generics
23 component on .5, we can talk about that in
24 more detail.

25 ///

1 BY MR. BOGLE:

2 Q. Right. And the generics
3 component specifically was 40% of the
4 variable compensation in this fiscal year,
5 right? That's what .5 indicates.

6 A. .5, targeted at 40% or \$14,000
7 of variable comp, same as the prior year, and
8 there was a fixed component and a variable
9 component, split equally.

10 Q. Right. So basically, what's
11 indicated here on page .5 is between the
12 fixed and variable components, a retail sales
13 manager could earn up to potentially 14,000
14 more dollars in that fiscal year if they met
15 the goals as it pertained to generics, right?

16 MS. HENN: Objection to form.

17 A. That's how I would read it,
18 going back 12-plus years, but, yeah, that
19 they had a \$14,000 opportunity if they
20 executed against two components of generics
21 performance in their territory.

22 BY MR. BOGLE:

23 Q. Okay. Now, at this point in
24 time, in the 2006 time frame, do you have an
25 understanding of what a retail sales manager

1 on average would make in a year, just their
2 base salary?

3 A. You know, I don't know that
4 it's moved significantly over time, and, you
5 know, base salaries today -- when I was the
6 district sales manager, maybe \$50,000.

7 Q. Okay. So the potential of a
8 \$14,000 addition to that is substantial to a
9 person making \$50,000; you would agree to
10 that, right?

11 A. Again, I think that's all of --
12 all relative. It would be 20, 25% earnings
13 potential over and above their base salary.

14 Q. Right. Okay. Let's go back to
15 page .12. There's a couple of other
16 questions on that page.

17 As to the customer retention
18 issue, you see there's a bolded section there
19 that says 100% Customer Retention.

20 Do you see that?

21 A. I do.

22 Q. It says: For the past several
23 years, we've asked you to concentrate on
24 keeping profitable customers and retaining
25 sell-side margins as we focused on the

1 Sell-Side Initiative - and you have.

2 Do you see that?

3 A. I do.

4 Q. We talked about earlier whether
5 McKesson would keep doing business with a
6 customer that couldn't pay -- couldn't pay
7 you, and this actually focuses on actually
8 the goal to keep the profitable customers,
9 right?

10 A. I see where the document says
11 that.

12 Q. Right. And then the next
13 section down says: Win New Business.

14 Do you see that?

15 A. I do.

16 Q. It says: Our goal over the
17 next three years is to become the market
18 leader in the independent segment and our
19 success relies on winning new business. Each
20 region has developed specific market share
21 goals. Your sales leadership team will work
22 with you to implement its plans to reach
23 those goals. I expect each of you to
24 leverage your skills and McKesson's strengths
25 to attract and win new customers. We will

1 provide selling skills training and
2 development at National Sales Conference and
3 beyond to ensure you win in your marketplace.

4 Do you see that?

5 A. I do.

6 Q. Okay. And just going back, for
7 example, on retaining existing customers. Go
8 to .9. So if these retail sales managers in
9 the fiscal year of 2007 retained 100% of
10 their customers, then they got a \$4,000 bonus
11 for that, right? That's what this is
12 indicating here?

13 A. Quarterly payout of \$1,000 with
14 an opportunity for exceptions. All
15 exceptions must be approved by the SVP.

16 Q. Okay. But the potential here
17 is, as it says, the opportunity to earn up to
18 \$4,000 in fiscal year 2007, right, for
19 retaining 100% of your customers?

20 A. That was the goal, but, I mean,
21 again, there were exceptions to that. We
22 might have paid the payout if they did lose a
23 customer anyhow.

24 Q. This concept of exceptions for
25 not retaining customers, do you recall this

1 going away, though, after 2007, that there
2 were no exceptions?

3 A. No, I don't remember. I think
4 we've always been -- tried to be fair and
5 flexible in the way we implement our
6 compensation program, and we still make
7 exceptions today.

8 Q. Okay. So you don't recall that
9 policy changing after fiscal year 2007?

10 MS. HENN: Objection to form,
11 lacks foundation.

12 A. I'm not aware that the policy
13 changed, and it is not our policy today,
14 so...

15 BY MR. BOGLE:

16 Q. Okay. Why is it not the policy
17 today? Why are there exceptions allowed for
18 this kind of bonus, for retaining customers?

19 MS. HENN: Objection to form,
20 lacks foundation.

21 A. Well, I guess to be clear, I'm
22 not aware that there's a retention component
23 of our compensation plan today, but there are
24 other components of our compensation plan
25 that could impact reps' compensation if we

1 were to -- if a customer was to move away
2 from us or discontinue business, and we make
3 reasonable adjustments for those things that
4 are outside of a rep's control, or if a rep
5 participates in a reason that we might
6 discontinue service. We're not going to
7 penalize them for operating with integrity
8 and doing the right thing.

9 BY MR. BOGLE:

10 Q. Okay. And that's important,
11 right? You don't want to disincentivize a
12 sales representative from reporting
13 potentially suspicious activity, right, of a
14 customer?

15 A. And I don't believe we do.

16 Q. Yeah, I'm not saying that you
17 do. I'm saying that you would agree it's
18 important not to withhold potential bonus
19 payouts for reporting suspicious activity
20 that might result in losing a customer,
21 right?

22 A. I think it's our practice and
23 that's why we implement it, that we want to
24 make sure that our reps understand that when
25 they perform under the spirit of the plan and

1 under their responsibilities to the company,
2 that they'll have opportunities to be
3 successful.

4 Q. Okay. Now, in this description
5 of the fiscal year 2007 incentive plan, do
6 you see any specific compensation laid out
7 for reporting suspicious activity related to
8 controlled substances?

9 A. I don't in this document, no.

10 Q. Okay. I want to hand you next
11 what I'm marking as Exhibit 8, which is
12 1.2139, and that's MCKMDL00642364.

13 There's your copy, sir.

14 (McKesson-Cavacini Deposition
15 Exhibit 8 marked.)

16 BY MR. BOGLE:

17 Q. Okay. This is a similar
18 document that we just looked at in the last
19 exhibit. This is now -- look at the e-mail
20 on the first page, Fiscal Year 2008 RSM
21 Compensation Plan.

22 Do you see that?

23 A. I do, yes.

24 Q. And again, from Brian Ferreira,
25 April 19, 2007. Do you see that date and

1 he's the one who sent it?

2 A. I do.

3 Q. Again, I'm not going to read
4 all the names, but one of the cc's on the cc
5 line is you, right?

6 A. Correct.

7 Q. Okay. So let me take a look at
8 this. If you go to the memo, which is on .2,
9 it says there: With the start of each new
10 fiscal year, we look ahead to new
11 opportunities to build on the success of the
12 previous year. In Fiscal Year 2008, we will
13 continue to position ourselves to become #1
14 in the ISMC segment by focusing on our three
15 core initiatives to.

16 ISMC, independent, small/medium
17 chain; is that right?

18 A. Correct.

19 Q. And then the three initiatives
20 are -- the first one being: Win in Generics
21 and drive compliance through our enhanced
22 McKesson OneStop Generics program and new
23 Generics Purchasing Rewards.

24 Do you see that?

25 A. I do.

1 Q. The McKesson OneStop Generic
2 program, what is that? Can you give me a
3 general description of what that program is?

4 A. I would describe it as our
5 source program for generics, generics that we
6 might have under contract, and offer those to
7 our customers.

8 Q. So sort of the ordering portal
9 for a customer is the OneStop Generics
10 portal?

11 A. No, I would refer to the portal
12 as McKesson Connect.

13 Q. Okay. The second bullet point
14 says: Win New Business by providing
15 differentiating value, the industry's best
16 pharmacy franchise, and an unmatched
17 technology offering.

18 You see that there, it's the
19 second initiative?

20 A. I do.

21 Q. And the third initiative is:
22 Provide our value every day and maintain 100%
23 Customer Retention.

24 Do you see that?

25 A. I do.

1 Q. Okay. And again, any
2 initiative here that relates to incentives
3 for reporting suspicious controlled substance
4 activity of customers?

5 A. No, I don't see that called out
6 as a specific component of the plan.

7 Q. Okay. If we go to page .3, it
8 outlines the various plan components.

9 Do you see that chart in the
10 middle?

11 A. I do.

12 Q. Okay. And then when you add up
13 all the different components, there's a
14 potential for up to a \$35,000 annual
15 incentive to the retail sales managers in
16 fiscal year 2008, right, if they met all
17 those goals?

18 A. My understanding, that's my
19 recollection.

20 Q. Okay. And I want to look next
21 at page .18. You see here at the top this
22 slide says Customer Retention Bonus, Higher
23 expectation, higher payout.

24 Do you see that?

25 A. I do.

1 Q. And then the first bullet point
2 below that says: Opportunity to earn \$1,250
3 each quarter by retaining 100% of accounts.

4 So that's gone up now from
5 4,000 in the previous year to 5,000
6 annualized for fiscal year 2008, right?

7 A. That's how I would read it.

8 Q. Okay.

9 A. 1,000 last year, 1250 this
10 year.

11 Q. Right. And then the second
12 bullet point says: No exceptions - any lost
13 account means no payout.

14 Do you see that?

15 A. I do see where the document
16 says that.

17 Q. Okay. So, for example, when I
18 was talking to you earlier about a sales
19 representative reporting suspicious
20 activities related to, for example, opioids
21 with a customer that could result in that
22 customer being lost, that sales
23 representative would receive no payout under
24 this bonus plan for retention, right?

25 A. That's not my recollection of

1 the practice. I do see where the document
2 says that and it also references sold to a
3 chain, closed or had credit issues.

4 But my recollection and my
5 experience does not support that.

6 Q. Okay. But the plain reading of
7 this document specifically says: No
8 exceptions - any lost account means no
9 payout.

10 That's what it says, right?

11 A. That is what it says, but
12 again, doesn't line up with my recollection
13 or my understanding of practice.

14 Q. Okay. So is there anything in
15 your view that, from that bullet point I just
16 read, that leaves open the possibility of a
17 sales representative's getting a payout for
18 retention if they lose an account?

19 Does that seem ambiguous in
20 that regard?

21 MS. HENN: Objection to form.

22 A. I see very clearly what the
23 document says, but, you know, again, it
24 doesn't line up with my recollection of our
25 practice and isn't our practice today.

1 BY MR. BOGLE:

2 Q. So in, for example, the fiscal
3 year 2008, does any example come to mind
4 where a sales representative reported
5 suspicious activity related to opioids or any
6 other controlled substance that resulted in
7 the customer leaving or the business being
8 lost to McKesson and that sales
9 representative still getting their bonus for
10 the retention?

11 A. I can't recall any specific
12 examples from 2008.

13 Q. Can you recall any specific
14 examples after 2008 where retention was an
15 aspect of the bonus where that sort of
16 factual circumstance occurred, a sales
17 representative reports suspicious activity,
18 McKesson cuts off that customer or the
19 customer is otherwise lost, and the reward or
20 the bonus for retention is still given to
21 that sales representative?

22 A. I don't believe that retention
23 as it's articulated here is a component of
24 the comp plan, but there are many components
25 of our comp plan that intertwine with

1 customers and customer performance, and I
2 think there are numerous examples. I'm
3 struggling to come up with the name of an
4 account or a specific time where we've made a
5 decision around a customer, that customer has
6 moved away from us or materially changed
7 their purchasing patterns as a result of our
8 decision and we have kept the rep whole,
9 moved that account out of their territory so
10 they wouldn't feel the impact.

11 Q. But can you think of a specific
12 example where a sales representative reported
13 suspicious activity related to opioids, the
14 customer account was lost for whatever
15 reason, and a retention bonus was still paid
16 in full to that representative, at any point
17 in time?

18 MS. HENN: Objection to form,
19 asked and answered.

20 A. I'm not aware of all the years
21 that retention was a part of our compensation
22 plan, and I can't think of a specific
23 example, but I'm aware that it has happened
24 and we've, you know, made every effort to
25 make sure that the rep was not negatively

1 impacted for helping us exercise our
2 responsibilities.

3 BY MR. BOGLE:

4 Q. You're aware of situations
5 where that's happened specifically to a rep
6 reporting suspicious opioid-related activity?

7 A. No, I don't know that the rep
8 reported it, but because of our program, you
9 know, we made a decision, and there was a
10 change in the customer that would have had a
11 potential impact on the rep, and we've moved
12 that account out of the territory to make
13 sure that the rep was not impacted, whether
14 they were a part of the due diligence process
15 or not.

16 Q. I'm talking specifically about
17 a situation where a representative says, I'm
18 going to report this conduct because I think
19 it's suspicious, and the customer is lost for
20 whatever reason thereafter, and you're aware
21 that McKesson still paid a retention bonus in
22 full to that representative.

23 MS. HENN: Objection to form,
24 asked and answered.

25 A. And again, the retention bonus

1 as part of our compensation plan has moved.

2 It's not part of our plan today. I'm not
3 sure of the exact years when it was in or
4 out, but there are many components of our
5 compensation plan that would be tied to
6 account retention.

7 And whether the rep is involved
8 in the regulatory decision or potentially a
9 credit decision that we made that they didn't
10 control or maybe they did influence, maybe
11 they didn't, we don't penalize them for it.
12 That's the spirit of the -- we want them to
13 be part of our responsibility.

14 BY MR. BOGLE:

15 Q. Okay. But under the plain
16 reading of -- on page .18 in Exhibit 8, and
17 saying there are no exceptions, if any lost
18 account -- any lost account means no payout,
19 under the fact pattern I've described, if
20 that account was lost, at least in 2008, that
21 rep wasn't getting his bonus, were they?

22 MS. HENN: Objection to form,
23 asked and answered, mischaracterizes
24 testimony.

25 A. I don't know that to be true.

1 I see what the document says, but that's not
2 my recollection of how we behaved.

3 BY MR. BOGLE:

4 Q. But you don't dispute that
5 that's exactly what the document says,
6 right --

7 MS. HENN: Objection to form,
8 asked and answered.

9 BY MR. BOGLE:

10 Q. -- as it was provided to you in
11 April 19th, 2007?

12 MS. HENN: Same objections.

13 A. I do see that the document says
14 no exceptions.

15 BY MR. BOGLE:

16 Q. Okay. I want to hand you what
17 I'm marking as Exhibit 9 to your deposition,
18 which is 1.1524, and that's MCKMDL00484482:
19 Here you go.

20 (McKesson-Cavacini Deposition
21 Exhibit 9 marked.)

22 BY MR. BOGLE:

23 Q. And this document,
24 Mr. Cavacini, starts with an e-mail sent by
25 you on April 23, 2010, Subject: Fiscal Year

1 2011 RSM Compensation Plan Review.

2 Do you see that?

3 A. I do, yes.

4 Q. So during this time frame in
5 2010 for the fiscal year 2011, would you have
6 been responsible for conveying the contents
7 of this plan to your representatives?

8 A. I believe I was the vice
9 president of sales for the market at that
10 time, which was a similar role that Brian had
11 in the other e-mails we reviewed, and, you
12 know, it appears that I was setting up a
13 conference call to discuss the plan with my
14 team.

15 Q. Okay. If we go to page .2
16 here, this is the start of the PowerPoint
17 slide deck. You see it's titled U.S.
18 Pharmaceutical Fiscal Year 2011 Retail Sales
19 Compensation Plans.

20 Do you see that?

21 A. FY11, yes.

22 Q. So would this sales plan
23 encompass more than just the retail sales
24 manager position?

25 A. As I flip through the document

1 and look at the actual compensation plan
2 that's attached, it appears targeted at
3 retail sales managers, so I don't believe
4 anybody else would have been covered by it.

5 Q. When it comes to the sales
6 force, U.S. Pharma-wise at McKesson, is the
7 largest group of that sales force the retail
8 sales manager group?

9 A. As far as numbers, like --

10 Q. Sure. Yeah, exactly.

11 A. Yeah, I believe they are the
12 largest field sales organization we have,
13 numbers.

14 Q. Right.

15 A. The number I gave you earlier,
16 120 of the 200 are probably retail sales
17 managers roughly.

18 Q. Understood.

19 If we can go to page .6 of this
20 document. You see here there's a comparison
21 of the 2010 incentive plan to the 2011
22 incentive plan as far as how much was going
23 to be paid and the percentage allocated to
24 different categories.

25 Do you see that?

1 A. That's what it appears to be,
2 yes.

3 Q. And, for example, in 2010, if
4 all goals were met, annualized, it could be
5 up to \$40,000 in potential incentives for the
6 retail sales manager, right?

7 A. That's what it looks to
8 indicate, yes.

9 Q. And that number had gone up to
10 \$46,100 if all criteria were met in the
11 fiscal year 2011, right?

12 A. It's a little bit hard to read
13 in the grayout, but the bullet point below
14 says: Increased annual target to 46,100.

15 Q. Right. And we can blow it up
16 on the screen, too, if at any point in time
17 that ever helps you. But I think you
18 answered the question either way.

19 So if you look, for example,
20 these components are broken down by
21 percentage for each year. For example, in
22 2010, the generics portion is 25%. That went
23 down to 19% in 2011.

24 Do you see that?

25 A. I do.

1 Q. The net sales in 2010 was 25%.

2 That went down to 19% in 2011, right?

3 A. 25 to 19, yes.

4 Q. And core sell margin in 2010
5 was 25%, which went down to 19% in 2011,
6 right?

7 A. Correct.

8 Q. And the new accounts went from
9 25% to 24% from 2010 to 2011, right?

10 A. Yes.

11 Q. Okay. And then -- so is --
12 again, is there a specific component outlined
13 here for reporting of suspicious activity
14 being entitled to a specific bonus?

15 A. No, I don't see that as a
16 called-out part of the comp plan.

17 Q. And it wasn't -- up until 2013,
18 when you talk about net sales, opioids were
19 included in the net sales calculation for the
20 incentive plan up until 2013 for retail sales
21 managers, right?

22 A. I'm not sure of the exact date,
23 but I am aware that we did make a change to
24 the plan and excluded, I believe, all
25 controlled substances from the compensation

1 plan.

2 Q. Okay.

3 A. I said excluded, right?

4 MS. HENN: You did.

5 THE WITNESS: Okay.

6 MR. BOGLE: You did.

7 BY MR. BOGLE:

8 Q. So up until the fiscal year
9 2013, from a simple perspective, if opioids
10 counted in the net sales calculation for
11 incentive plans for retail sales managers,
12 the more opioids that were sold to a customer
13 during that time frame, the more potential
14 bonus a retail sales manager could receive
15 under the net sales component, correct?

16 A. I don't necessarily agree.
17 They were a part of the compensation program,
18 and, yes, you know, the total purchases of
19 the account against a baseline was often the
20 measure for net sales, you know, what the
21 territory did in the prior year and what they
22 do in the post year and the movement up and
23 down above that baseline.

24 You know, so as accounts grew,
25 you know, and as their purchases from us of

1 pharmaceuticals, over-the-counter products,
2 some of which might be controlled substances,
3 you know, I understand that there could be a
4 correlation.

5 But our ability, in my
6 experience, as in those roles, to influence
7 that, you know, never really came into
8 discussion.

9 Q. When you say to influence that,
10 what is the "that" you're referring to?

11 A. The amount of any product that
12 was being purchased.

13 Q. Okay. So in your experience
14 then, you never saw instances where the sales
15 force encouraged folks in the regulatory
16 department to increase thresholds for opioids
17 to make sure the customer stayed happy. You
18 never saw that?

19 A. I think I'm aware of
20 communication from our sales team to the
21 regulatory affairs team that I wouldn't
22 necessarily agree with how it was phrased,
23 but...

24 Q. Right, because you've seen
25 e-mails phrased along those lines, right,

1 where the sales representatives were
2 encouraging the regulatory department to
3 increase thresholds for opioids to keep the
4 customer happy and not to lose their sales,
5 right?

6 A. I don't know that I remember
7 seeing those specific words, but, yes, I have
8 seen e-mails that might talk about the
9 importance of the customer and, you know,
10 sales rep communicating with our regulatory
11 affairs team that I believe was independent
12 and was fully empowered to make a decision
13 based on their responsibility and view of the
14 account.

15 Q. But independent of whether you
16 think that they were an independent
17 department, pressure should never be put by
18 the sales department on the regulatory
19 department in its decisions to increase or
20 not increase thresholds for opioids, right?

21 MS. HENN: Objection to form,
22 lacks foundation.

23 A. I think by practice, I would
24 prefer that we let our regulatory affairs
25 team make independent judgments based on the

1 information they have and their view of the
2 account.

3 BY MR. BOGLE:

4 Q. And so going back to my initial
5 question though: Prior to fiscal year 2013
6 when opioids would have been included in the
7 net sales calculations, as a practical
8 matter, if they're included in the net sales
9 calculation, the more they get sold of any
10 product, including opioids, the more
11 potential bonus a representative can receive,
12 right?

13 MS. HENN: Objection, asked and
14 answered.

15 A. Prior to excluding controlled
16 substances, they were part of the net sales,
17 but when I think about, you know, my
18 experience with RSMs and managing a territory
19 and the financial incentive that's tied to
20 it, you know, when we looked at the
21 compensation plan that we just reviewed --

22 BY MR. BOGLE:

23 Q. Tell me which document you're
24 on, just so we're clear.

25 A. I was just looking at

1 Exhibit 9.

2 Q. Okay.

3 A. The net sales component being
4 an annual incentive of \$8,000 spread across
5 75 to 100 accounts in a territory, and again,
6 you know, we were selling distribution
7 services.

8 I never spoke to customers
9 about my experience, you know, specific
10 products. They were part of the purchases of
11 that pharmacy.

12 Q. So in your experience in the
13 sales department, the ability to receive or
14 not receive up to \$8,000 for a person making
15 on average 50,000 you don't think made any
16 difference to them?

17 MS. HENN: Objection to form.

18 A. I mean, I can only speak to my
19 experience, and I never felt a conflict under
20 the compensation plan in that one account
21 might contribute a few hundred dollars. You
22 know, my focus was on the health of my
23 territory and making sure that I could
24 service all of my customers, and had an
25 awareness that, as I stated earlier, our

1 license and our ability to distribute
2 controlled substances was a privilege. I
3 would much rather have one hard conversation
4 with one customer than potentially 75 hard
5 conversations.

6 BY MR. BOGLE:

7 Q. Okay. That's you you're
8 speaking of, right? That's your feeling on
9 it. As Gene Cavacini, that's how you viewed
10 it, correct?

11 A. Yeah. And I believe that's
12 what I tried to instill in my sales team too.

13 Q. But you're certainly not trying
14 to speak for any of your sales members as to
15 whether they specifically bought into that,
16 right?

17 MS. HENN: Objection to form.

18 A. I don't know that it would be
19 possible for me to speak about what others...

20 BY MR. BOGLE:

21 Q. Right. In going back to --
22 it's in Exhibit 9, and actually, it's pulled
23 up on the screen, generics was, in 2010, 25%
24 of the incentive plan, 19% in 2011.

25 MS. HENN: What page is it?

1 A. And I'm sorry, I put the
2 document away again. It was .6?

3 BY MR. BOGLE:

4 Q. Yes, sir, you're correct about
5 that.

6 A. Okay.

7 Q. This is Exhibit 9, .6 is the
8 page.

9 MS. HENN: Thank you.

10 BY MR. BOGLE:

11 Q. So you know, for example, in
12 2010, 2011, many of the opioid products
13 available on the market were generics, right?

14 A. You know, hard for me to say
15 what I knew in FY10, when I came to that
16 awareness. I am aware that many controlled
17 substances are offered generically.

18 Q. Okay. And certainly in 2010
19 and 2011, and we saw years prior, increasing
20 sales of generic products was another way for
21 sales representatives to increase their
22 incentive pay, correct?

23 MS. HENN: Objection to form,
24 mischaracterizes the document.

25 A. Generics is a compensation of

1 our sales incentive plan, and weighted
2 equally with net sales and core sales margin
3 in FY11.

4 BY MR. BOGLE:

5 Q. And the decision to remove
6 opioids from the sales incentive plan was
7 done at a time period where McKesson was
8 being investigated again by the DEA, right?

9 A. I'm not sure.

10 Q. Okay. Are you not aware that
11 in 2012 the DEA renewed investigations into
12 McKesson's activities that pertained to
13 distribution of controlled substances like
14 opioids?

15 MS. HENN: Objection to form,
16 lacks foundation.

17 A. I can't say for certain of the
18 timing, no.

19 BY MR. BOGLE:

20 Q. Okay. Is it your testimony
21 that such investigations played no role in
22 McKesson's decisions to remove opioids as
23 part of the incentive plans for sales
24 representatives?

25 MS. HENN: Objection to form,

1 lacks foundation.

2 A. I'm not aware of any
3 connection.

4 BY MR. BOGLE:

5 Q. Okay. So how did this just
6 bubble up then in fiscal year 2013 if not
7 prompted by DEA investigations?

8 A. I'm not sure of what the
9 motivation was or how we came to the decision
10 to change the compensation plan.

11 Q. I'm going to hand you what I'm
12 marking as Exhibit 10 to your deposition,
13 which is 1.1514, and that's MCKMDL00335804.

14 (McKesson-Cavacini Deposition
15 Exhibit 10 marked.)

16 BY MR. BOGLE:

17 Q. Okay. And what I've handed you
18 here is a Fiscal Year 2013 Retail Sales
19 Incentive Compensation Plan Communication,
20 which is dated April 2012.

21 Do you see that?

22 A. I do, yes.

23 Q. And if you go here to page .2,
24 it says: Fiscal Year '13 RSM Compensation
25 Plan, Guiding Principles & Feedback.

1 Do you see where that reference
2 is made?

3 A. I do.

4 Q. Okay. And below Guiding
5 Principles, the third bullet point says: Pay
6 for performance.

7 Do you see that?

8 A. I do.

9 Q. What performance metrics are
10 being referenced here?

11 MS. HENN: Objection to form,
12 calls for speculation.

13 A. I don't know, I didn't write
14 the document. I mean, I think it's
15 reasonable to assume, and if it correlates
16 with the components of the comp plan that are
17 going to be spelled out, but I can't say for
18 sure.

19 BY MR. BOGLE:

20 Q. And those components
21 specifically in this year as discussed
22 further down that page are Gx, which is
23 generics, right?

24 A. I would take Gx to be generics.

25 Q. Net sales is the second, right?

1 A. Correct.

2 Q. Third is new accounts, which is
3 noted to be new business.

4 Do you see that?

5 A. That's what the document says.

6 Q. Those are noted to be the most
7 important components of the plan in fiscal
8 year 2013, right?

9 MS. HENN: Objection to form.

10 THE WITNESS: I'm sorry.

11 MS. HENN: Go ahead.

12 A. I was going to say it seems to
13 reference feedback they had received on the
14 plan, and it says RSM feedback, is those are
15 the most components -- most important
16 components. Our sales executives felt
17 something else. That's how I read it. I
18 don't...

19 BY MR. BOGLE:

20 Q. Okay. So you think that the
21 retail sales managers were wrong as far as
22 what was being compensated?

23 A. Seems to be their opinion that
24 those were most important, and based on the
25 several other comp plans that we reviewed

1 prior, those were largely -- they were
2 significant components of the comp plan and
3 continued to be, I believe, into FY13.

4 Generics, net sales and new accounts are
5 listed on .5 as parts of the comp plan.

6 Q. Right. And I want to ask you
7 about another reference here on .12. This is
8 Fiscal Year '13 SE Compensation Plan. Is
9 that sales executives?

10 A. I would take that to be sales
11 executives, yes.

12 Q. And the first bullet point
13 there says: Maintained, quote/unquote,
14 hunter focus.

15 What does that mean, to be a
16 hunter as a sales executive?

17 A. I would take -- the sales
18 executive as we described earlier is
19 primarily a business development role. They
20 are out working with prospective customers to
21 try and find if there's a fit to bring them
22 to McKesson. That was my responsibilities as
23 a sales executive during the years I had the
24 role. I was primarily focused on -- on not
25 account management, but more business

1 development.

2 Q. Okay. So out hunting for new
3 business, right?

4 MS. HENN: Objection to form.

5 A. Trying to make connections that
6 could lead to mutually beneficial
7 relationships between us and new customers.

8 BY MR. BOGLE:

9 Q. So as we discussed in fiscal
10 year 2013 would be when opioids were excluded
11 as part of the compensation incentives, but
12 there was no measure taken at that point in
13 time to incentivize reporting suspicious
14 activities related to opioids, was there?
15 There was no bonus paid for that?

16 MS. HENN: Objection to form,
17 lacks foundation.

18 A. As I review the document here,
19 I don't see a specific bonus tied to that,
20 no.

21 MS. HENN: Counsel, I just note
22 that Exhibit 10 looks like it was
23 printed without the normal
24 confidentiality stamp. I'm not sure
25 why that would be.

1 MR. BOGLE: That was
2 unintentional if it was. I'm happy to
3 have you say it's confidential.

4 MS. HENN: I would just ask the
5 court reporter to note that Exhibit 10
6 should have a confidential and
7 potentially highly confidential stamp
8 on it.

9 MR. BOGLE: That's fine. That
10 was unintentional, I can assure you of
11 that part.

12 MS. HENN: Understood.

13 BY MR. BOGLE:

14 Q. When McKesson would cut off a
15 customer for a potential suspicious activity
16 related to opioids, would the general
17 practice be to cut that customer off entirely
18 from purchasing from McKesson anything?

19 A. When we make a regulatory
20 decision around controlled substances for a
21 customer, not necessarily. We just might
22 discontinue shipping controlled substances
23 but still maintain a business relationship
24 with that customer in some way. Oftentimes
25 the customer would move away from us

1 entirely.

2 Q. So when they would move away
3 from you entirely because of the cuts on the
4 controlled substances, would there be any
5 credit given from a net sales perspective to
6 the sales rep for noncontrolled substance
7 sales that were lost for that customer?

8 MS. HENN: Objection to form,
9 vague.

10 A. Would there be credit given to
11 the rep for not...

12 The net sales component is
13 typically, in my experience, has been
14 based -- that it's based off the baseline.
15 So if they bought -- the customer, the
16 pharmacy purchased \$100 worth of medicines
17 and over-the-counter, and then the next year
18 they bought \$102, it's that over target
19 component that would be the -- what the rep
20 would be incented on.

21 So if we made a regulatory
22 decision, you know, you would think purchases
23 are going to decrease over the prior year, so
24 that would be a negative impact of the rep,
25 and that's why it has been my understanding

1 of practice to move that account entirely out
2 of the territory, so the baseline comes out.

3 BY MR. BOGLE:

4 Q. When you say move it out of the
5 territory, what do you mean by that? I'm not
6 sure I understand what that means.

7 A. Well, our retail sales managers
8 have a territory, a group of accounts that
9 they are responsible for maintaining and
10 interacting with, and it's that territory
11 that drives their incentive plan and their
12 performance.

13 So if we moved it out so it
14 wasn't attached to that rep anymore, it was
15 an in-house account or held to the side,
16 there wouldn't be the drag on the rep, so
17 there would be no negative implication.

18 Q. Are you aware of any specific
19 examples when you've been with the company
20 that -- like what you're talking about where
21 a pharmacy's cut off for controlled
22 substances, they decide we're going to go
23 somewhere else because we want to order
24 everything we want to order, and the rep is
25 specifically credited in the way you're

1 talking about?

2 MS. HENN: Objection to form.

3 BY MR. BOGLE:

4 Q. Can you name me a customer?

5 I'd like to research this. Can you name me a
6 customer that that happened with?

7 A. Yeah, I mean, I don't know that
8 I see them all and it's hard for me to
9 remember the specific customers, but I am
10 aware of the practice and it is our practice,
11 I mean.

12 Q. Is there an SOP, standard
13 operating procedure, that outlines that
14 practice?

15 A. I'm not sure.

16 Q. Okay. Under the fact pattern
17 you're describing, if the customer is lost
18 altogether and therefore is out of the sales
19 rep's portfolio, they then for the following
20 year, has got to try to find new customers to
21 fill in that gap, correct?

22 MS. HENN: Objection,
23 mischaracterizing testimony.

24 A. Not necessarily because, again,
25 the baseline or the starting point would be

1 reset. So you don't bring the baseline from
2 the prior year into the next year. Targets
3 are reset every year because customers move
4 in and out for a number of reasons, because
5 territories change in size and scope, our
6 teams change from year to year, so a new
7 baseline is set every year.

8 BY MR. BOGLE:

9 Q. Can you think of, in the last
10 five years, any specific circumstance, a
11 customer's name where that's happened?

12 A. Again, I'm struggling to come
13 up with a specific customer name, but I'm
14 aware that it has happened.

15 Q. Okay.

16 A. And I've reviewed in aggregate
17 those type of moves.

18 Q. Okay. Do you know who would be
19 responsible for making the decisions, let's
20 say in the last five years, as to whether
21 that credit would be given to a sales
22 representative? Do you know what person has
23 that responsibility?

24 MS. HENN: Objection to form.

25 Mischaracterizing the testimony.

1 A. My understanding, that those
2 are approved by our regional vice presidents.

3 BY MR. BOGLE:

4 Q. Okay. So the region that
5 would -- Ohio would fit within, who would
6 that be within the last five years?

7 A. For a period of time it was me
8 and then since to me -- the eastern part of
9 Ohio serviced by New Castle would have fallen
10 into the northeast region, which from the
11 period of 2015 to 2017 was me. After that it
12 was Chris Smith, who's no longer with the
13 company. We've since restructured the
14 regions.

15 Q. Okay. What guideposts would
16 you use to make those decisions as to whether
17 the sales rep would get such a credit?

18 MS. HENN: Objection, lacks
19 foundation.

20 A. I believe it was from my
21 experience fairly standard practice that if
22 that was the circumstances where it was a
23 regulatory decision that drove the shift in
24 the customer's business, we would make the
25 change for the rep.

1 BY MR. BOGLE:

2 Q. What factors were used to
3 determine if it was a regulatory decision
4 that prompted it if the customer wasn't cut
5 off entirely?

6 A. Usually it was information
7 presented from the sales team, the rep, their
8 manager, the vice president of sales, the
9 VP/GM that would have been familiar with the
10 circumstances relative to that customer and
11 would have brought the request forward to
12 make the adjustment.

13 Q. During the time that you had
14 responsibility to make those decisions, do
15 you have any approximations as to how many
16 times you had to make those judgment calls?

17 A. I don't. I'd be guessing, you
18 know.

19 Q. Okay.

20 A. But from time to time.

21 Q. Okay. All right. I'm going to
22 hand you what I'm marking as Exhibit 11,
23 which is 1.1515, and that's MCKMDL00335830.

24 A. Thank you.

25 (McKesson-Cavacini Deposition

1 Exhibit 11 marked.)

2 BY MR. BOGLE:

3 Q. What I'm handing you now is the
4 Fiscal Year '14 Retail Sales Compensation
5 Plans dated April 2013.

6 Do you see that?

7 A. I do, yes.

8 Q. Okay. And look at this, couple
9 of components of this with you.

10 If you go to page .6, you see
11 there's a -- I'm sorry -- slide titled FY2014
12 Retail Sales Incentive Plan, and below that
13 it says RSM Net Sales.

14 Do you see that?

15 A. I do, yes.

16 Q. And RSM, that's retail sales
17 managers again?

18 A. That's how I would take it,
19 yes.

20 Q. Okay. And it notes here that
21 in the fiscal year 2014 the net sales
22 component was increased up to the 40% mark.

23 Do you see that?

24 A. I see where it says that. I
25 don't remember seeing like in the previous

1 document had the year over year -- no, it's
2 on page 5. No, it's not. I'm sorry. No,
3 it's on page 4.

4 Yeah, so net sales was
5 increased from 30 to 40 in the fiscal '14
6 plan.

7 Q. Right. And, for example, new
8 accounts was 30% in fiscal year 2014, right?

9 A. Same as the prior year, 30%.

10 Q. In fact, there's only three
11 components in 2014 as far as incentive plans.
12 There was the generics at 30%, net sales at
13 40% and new accounts at 30%, right?

14 A. On page 4 at the bottom it
15 references some solutions. They're listed as
16 products, additional offering that we could
17 sell that appeared to have variable comp to
18 it.

19 Q. That's a fair point.

20 A. Yeah, the core component of the
21 plan appears to add up to 100% on those three
22 components.

23 Q. Okay. So again, looking at the
24 2014 fiscal year, there's no -- there's no
25 component, whether it be on the product side

1 or the core components, to provide any sort
2 of incentives for reporting suspicious
3 activities related to opioids, right?

4 A. No, I'm not aware that we
5 specifically called out or provided an
6 incentive for reporting suspicious behavior.

7 Q. From 2002 to the present time,
8 are you aware of any hotline that has existed
9 for sales representatives to report
10 suspicious opioid-related activity, that's
11 dedicated for that purpose?

12 A. No, I can't answer that I am.
13 We have a corporate ethics lines, but not
14 aware of something specific for controlled
15 substances.

16 Q. And the ethics line is
17 generally to get ethical advice, right?

18 A. No, I think it's to report an
19 issue, but I would understand that if you
20 understood something was not as it should be,
21 there's an anonymous way that you can use the
22 ethics line to report and raise that issue
23 for review.

24 Q. Is there any standard operating
25 procedure as to when things should be

1 reported to the ethics line?

2 A. I can't say that I recall an
3 SOP. It may be in our code of conduct I
4 would like to review, but I'm not aware of a
5 specific document of when to call, but I
6 think the spirit of our program would be that
7 if you see something internally, externally
8 that's inappropriate that you think needs to
9 be looked into that's impacting you or the
10 business or our customers, that line is open
11 and...

12 Q. Are there any specific bonuses
13 provided to employees that make legitimate
14 reports to the ethics hotline?

15 A. Not that I'm aware of.

16 MR. BOGLE: I'm about to shift
17 gears a little bit. I don't know if
18 it's a decent lunch break time. I can
19 shift gears if you want. It doesn't
20 matter.

21 MS. HENN: Let's go ahead and
22 break for lunch.

23 THE WITNESS: Whatever you
24 think is best.

25 THE VIDEOGRAPHER: We're off

1 the record at 12:27 p.m. This
2 concludes Disc 2.

3 (Recess taken, 12:27 p.m. to
4 1:04 p.m.)

5 THE VIDEOGRAPHER: We are back
6 on the record at 1:04 p.m., beginning
7 of Disc 3.

8 BY MR. BOGLE:

9 Q. Mr. Cavacini, we had stopped
10 before lunch talking about the bonus or sales
11 incentive plans over time. Do you recall
12 that discussion generally?

13 A. I do, yes.

14 Q. Okay. Now, in addition to
15 motivating sales representatives with those
16 sales incentive plans, you also personally
17 would send e-mails sort of encouraging your
18 sales representatives over time to be as
19 aggressive as possible in their sales tactics
20 to get and keep new customers, right?

21 MS. HENN: Objection to form.

22 A. I think it's reasonable to
23 assume that I would communicate with my team
24 to try and reinforce behaviors and motivate.

25 ///

1 BY MR. BOGLE:

2 Q. Okay. I'm going to hand you
3 what I'm marking as Exhibit 12 to your
4 deposition, which is 1.2133. That's Bates
5 number MCKMDL00489792. There you go, sir.

6 (McKesson-Cavacini Deposition
7 Exhibit 12 marked.)

8 BY MR. BOGLE:

9 Q. You see here, Mr. Cavacini, you
10 have an e-mail from you dated February 8,
11 2010 to a group of individuals.

12 Do you see that?

13 A. I do.

14 Q. This group of individuals,
15 would this generally be the sales force you
16 were supervising at that point in time?

17 A. Looks to be the team of RSMs,
18 yes.

19 Q. Okay. And the subject is Time
20 Magazine on CAH. CAH being Cardinal Health
21 in this instance, right?

22 A. That's how I would take it.

23 Q. For example, if you see on the
24 second page there's an e-mail from a Bill
25 Roehl and the body of that says: Time

1 Magazine article on changes at Cardinal
2 referred to on today's call.

3 Do you see that?

4 A. I do.

5 Q. And Cardinal Health is one of
6 your main competitors at McKesson when it
7 comes to distribution, right?

8 A. They're another competitive
9 distributor.

10 Q. And a large one at that, right?
11 They're one of your most significant
12 competitors, right?

13 A. I think they're a significant
14 player in the market, and depending on
15 market, I mean, that relevance might be
16 different in different geographies, but they
17 are a significant player.

18 Q. Okay. If you look at this
19 e-mail you sent, you say: Team, interesting
20 article on CAH. Looks like they feel they
21 have their house in order and are ready to
22 get back in the fight.

23 When you say they have their
24 house in order, what are you referring to?

25 A. I don't know. The original

1 article isn't here. I don't remember the
2 2010 Time Magazine, or I'd be speculating as
3 to what my thought process was back then.

4 Q. Okay. You continue to say:
5 We've already experienced some increased
6 activity in the New Castle market and should
7 expect them to be coming after us in other
8 areas.

9 Do you see that sentence?

10 A. I do, right after, "Please make
11 sure you are selling value to our customers
12 at every opportunity."

13 Q. I'm going to get to that. I'm
14 going one by one.

15 The New Castle market covers
16 portions of Ohio, correct?

17 A. New Castle would ship eastern
18 Ohio.

19 Q. Including Summit and Cuyahoga
20 Counties, true?

21 MS. HENN: Objection to form,
22 lacks foundation.

23 A. I'm not sure of the specific
24 geographies of Ohio. I would say, you know,
25 the Cleveland area and suburbs.

1 BY MR. BOGLE:

2 Q. Right.

3 A. Eastern Ohio.

4 Q. Okay. You continue: Please
5 make sure you are selling value to our
6 customers at every opportunity, and remember,
7 the best defense is a good offense. Let's
8 spend plenty of time in their accounts making
9 them protect their base before they come
10 after us.

11 Do you see that?

12 A. I do.

13 Q. So what you're encouraging your
14 sales force to do in the last sentence there
15 is to try to target Cardinal Health accounts
16 in the New Castle market, to try to take
17 those accounts from them as a way of having a
18 good offense against Cardinal, right?

19 A. I would say that the sales team
20 that's copied here covers my entire geography
21 at the time, which would have been Delran and
22 New Castle. So I was communicating to the
23 entire team. I do see that -- again, I don't
24 remember the specifics, but apparently in the
25 New Castle market I was articulating that

1 we've seen Cardinal be active. We would
2 expect that they would be active in other
3 parts of our market, and to be active in
4 their accounts too.

5 Q. Right. Meaning active in their
6 accounts means try to flip the customer to
7 become a McKesson customer, right?

8 MS. HENN: Objection to form.

9 A. Not always. I mean, I think it
10 was making sure that they were spending their
11 time defending. That's exactly what I said.

12 BY MR. BOGLE:

13 Q. When you say let's spend plenty
14 of time in their accounts, who's the "their"
15 you're referring to?

16 A. That would seem to be that I'm
17 referencing Cardinal.

18 Q. Right. So if it's Cardinal's
19 account, how would you be active in their
20 accounts other than trying to flip the
21 customers over to McKesson?

22 A. But as I read this it seems
23 like I was thinking about occupying
24 Cardinal's time, the best defense is a good
25 offense, let's spend plenty of time in their

1 accounts making them protect their base.

2 If Cardinal is spending their
3 time explaining to their customers why
4 McKesson isn't a good choice, they don't have
5 time to go out and be in my accounts selling
6 their value proposition.

7 Q. Okay. And when you gave sort
8 of directives like this, was it your
9 experience that your sales force listened to
10 you?

11 A. I mean, they were a team of
12 independent contributors. I think they're --
13 was individual and varied from time to time
14 and maybe not as much as I would have liked,
15 but I do think they took my directions and
16 input seriously.

17 Q. Okay. John Kuczynski, that was
18 one of your individuals you supervised on the
19 sales force around this time in 2010, right?

20 A. John is an RSM in our New
21 Castle markets primarily.

22 Q. Right. So during, for example,
23 this e-mail we were looking at is from 2010,
24 and he's listed as one of the recipients,
25 right?

1 A. Yeah. I was the vice president
2 of sales and during that period of time had
3 responsibility for the New Castle market and
4 John was copied on the e-mail.

5 Q. Is he an employee at McKesson
6 that, during your time working with him, you
7 felt listened to your directives and took
8 them to heart?

9 A. I think John always tried to do
10 his best to represent McKesson and serve his
11 customers in the territory.

12 Q. All right. I'm going to hand
13 you now what I'm marking as Exhibit 13, which
14 is 1.2132, and that's MCKMDL00495641.

15 (McKesson-Cavacini Deposition
16 Exhibit 13 marked.)

17 BY MR. BOGLE:

18 Q. I'm looking at the e-mail on
19 the top of the first page. It's an e-mail
20 from John Kuczynski, October 13, 2010, to
21 three individuals, one of them being you,
22 right?

23 A. I was on the cc line of this
24 e-mail. It was sent to Patrick and I was
25 copied.

1 Q. What was Patrick's role,
2 Patrick Soos? Is that how you say that?

3 A. Correct, Soos. I believe at
4 this time he was the district sales manager
5 for Buffalo and New Castle.

6 Q. Okay. So you would have been
7 Patrick's boss at this point in time?

8 A. Yes, Patrick reported to me.

9 Q. If you see here, Mr. Kuczynski
10 says: I am meeting with Weber's Pharmacy on
11 Friday to propose for \$250,000 of CAH
12 business.

13 Again, CAH, that's the
14 terminology you guys frequently used for
15 Cardinal Health, right?

16 A. Correct. It's their stock
17 ticker, I believe.

18 Q. Right.

19 The attached pricing model
20 provides an idea of where I'd like to go with
21 this. CAH is aggressively trying to keep the
22 business. ABC is also trying to win the
23 business.

24 That's AmerisourceBergen?

25 A. Bergen.

1 Q. Bergen, yeah. Okay. Which is
2 another one of your competitors, right?

3 A. They're another national
4 distributor.

5 Q. Right.

6 We have one crack at this one
7 due to timing and the age of the owners. I'm
8 taking a two-edge approach to this, win the
9 business or find a buyer, whichever comes
10 first. So far it looks like they're
11 postponing selling the store.

12 Do you see that?

13 A. I do.

14 Q. Now, the concept of winning the
15 business or trying to find a buyer for a
16 pharmacy, is that something you encourage
17 your sales reps to do?

18 A. Business development, trying to
19 grow their territory is a component of the
20 sales reps' responsibility. I'd kind of be
21 speculating on the find a buyer comment.

22 Q. Well, it says that he has a
23 two-edge approach, one edge being win the
24 business, second edge being find a buyer.
25 And then he references in the next sentence

1 that they're postponing selling the store.

2 So the implication obviously
3 being here that if Mr. Kuczynski can't get
4 their business, he's going to try to find
5 somebody to buy the pharmacy, right?

6 MS. HENN: Objection to form.

7 A. I mean, it's hard for me to
8 speculate what John was thinking when he
9 wrote this e-mail. I mean, we do work with
10 our owners from time to time to help them
11 acquire other independent pharmacies to keep
12 that business independent and part of the
13 community. If these owners were interested
14 in selling the store, trying to find a
15 McKesson customer that might be interested in
16 buying the store could be a strategy we would
17 have explored.

18 BY MR. BOGLE:

19 Q. But that strategy as outlined
20 in this e-mail would only be considered if
21 Mr. Kuczynski couldn't win the business,
22 right?

23 MS. HENN: Objection to form,
24 calls for speculation.

25 ///

1 BY MR. BOGLE:

2 Q. That's option number two.

3 MS. HENN: Same objection.

4 A. It's listed second. I mean, I
5 read this to do that he's running two paths
6 at the same time, whichever comes first.

7 Not --

8 MS. HENN: This is --

9 MR. BOGLE: Go ahead.

10 A. Whichever come first, so not
11 one after the other; whichever one we could
12 accomplish first is how I read this.

13 BY MR. BOGLE:

14 Q. So win the business or find a
15 buyer, those are the two options he lists,
16 right, for this pharmacy?

17 A. He said: I'm taking a two-edge
18 approach to this, win the business or find a
19 buyer, whichever comes first.

20 Q. During your time as vice
21 president of sales, did you encourage your
22 sales force to try to find new buyers for
23 pharmacies that wouldn't go to McKesson for
24 their business?

25 MS. HENN: Objection to form.

1 A. We have a program that works
2 with McKesson owners that are interested in
3 expanding their ownership and acquiring new
4 stores, and if we were aware of our stores
5 that were potentially for sale, owner was
6 retiring or didn't want to be in the business
7 anymore, we would try to marry them with
8 other McKesson customers who would want to
9 acquire that store, keep the store
10 independent, keep the store part of the
11 community, keep it as a McKesson customer.

12 If a competitor store was going
13 to sell, we would try to find a McKesson
14 buyer that might be interested.

15 BY MR. BOGLE:

16 Q. Okay. So if a store like this,
17 for example, that was with Cardinal Health,
18 you find out that they're considering
19 possibly selling, your approach would be to
20 try to find a McKesson-sympathetic buyer to
21 help you flip that business, right?

22 MS. HENN: Objection to form.

23 A. I don't know that I agree with
24 how the question was framed. We would try to
25 find a McKesson-friendly buyer, an existing

1 customer that we have a relationship with and
2 introduce them to that opportunity to see if
3 that was a fit and they wanted to acquire the
4 store.

5 BY MR. BOGLE:

6 Q. When it comes to opioid
7 products that McKesson sells, is it the
8 practice of McKesson to only sell opioid
9 products that are FDA approved?

10 A. I'm not sure. We sell 20,000s
11 of -- over 20,000 different products in our
12 distribution centers. I'm not sure of how we
13 decide what to stock and what not to stock.

14 Q. Okay. Let me ask you this.
15 Let me back up.

16 You understand, first of all,
17 that opioids in all forms are only available
18 via prescription, right, in this country at
19 least?

20 A. I mean, my understanding is
21 that all prescription medications, including
22 controlled substances and opioids, are
23 available by prescription.

24 Q. Right. And that all substances
25 that are available only via prescription in

1 this country have to be FDA approved.

2 Do you understand that?

3 A. That's my general
4 understanding.

5 Q. Okay. So then I go back to my
6 earlier question, which is -- and I'll
7 rephrase it a different way: Do you ever
8 recall any periods in time where McKesson was
9 selling opioid products that were not FDA
10 approved?

11 A. I'm not aware.

12 Q. Okay. Do you understand the
13 purpose behind, when it comes to opioids
14 specifically, only selling those that are FDA
15 approved?

16 A. My understanding that all
17 medications need to be approved by the FDA
18 before they're commercially available to
19 patients and prescribers, so I think it's to
20 protect the population.

21 Q. Right. I'm going to hand you
22 what I'm marking as Exhibit 14, which is
23 1.2114.

24 (McKesson-Cavacini Deposition
25 Exhibit 14 marked.)

1 BY MR. BOGLE:

2 Q. All right. I'm looking at the
3 e-mail on the top of the first page that says
4 McKesson OneStop Generics Newsletter dated
5 March 1, 2008.

6 Do you see that?

7 MR. RALEY: Is there a Bates
8 stamp?

9 MR. BOGLE: Yeah,
10 MCKMDL00642308. Let me reask my
11 question since I jumped in with the
12 Bates number.

13 BY MR. BOGLE:

14 Q. You see there, this is a
15 newsletter from March 1st, 2008 titled
16 McKesson OneStop Generics?

17 A. I do.

18 Q. Okay. And these sort of
19 newsletters in this time frame are
20 newsletters you would receive, correct?

21 A. I remember seeing them from
22 time to time, yeah. The distribution list
23 isn't here, but I do remember seeing similar
24 communications.

25 Q. I can represent to you that

1 this was produced to us as coming from your
2 custodial file. Although there is no list of
3 recipients at all, I can make that
4 representation to you.

5 A. Wouldn't surprise me.

6 Q. Okay. Let's take a look at
7 page .4 in this document.

8 You see about two-thirds of the
9 way down the page, it says Product Notices
10 and Reminders?

11 Do you see that?

12 A. I do.

13 Q. Below that it says Regarding
14 Products Containing Hydrocodone, and then it
15 says: On September 28, 2007, the FDA
16 announced its intention to take enforcement
17 action against companies marketing unapproved
18 prescription drug products containing
19 hydrocodone, a narcotic widely used to treat
20 pain and suppress coughs. In fact, most of
21 the hydrocodone formulations now marketed to
22 suppress coughs have not been approved.

23 Do you see that?

24 A. I do see where it says that.

25 Q. And then skipping a paragraph

1 and going to the third paragraph, it says:
2 Anyone marketing unapproved hydrocodone
3 products labeled for use in children younger
4 than 6 years of age were required to end
5 further manufacturing and distribution of the
6 products on or before October 31, 2007.

7 Do you see that?

8 A. I do.

9 Q. Then the last sentence in that
10 paragraph says: Following is a list of
11 products on the McKesson OneStop Generics
12 program that are impacted by this decision.

13 Do you see that?

14 A. I do.

15 Q. And below that is a chart that
16 includes one, two, three, four, five
17 different hydrocodone-containing products
18 that it's noted here in this newsletter would
19 be implicated by this FDA mandate, right?

20 A. That's what it appears to
21 indicate, yeah.

22 Q. Okay.

23 A. I'm following.

24 Q. And McKesson OneStop Generics,
25 I think we talked about that a little bit

1 before, that's the sort of ordering program
2 for generic products at McKesson, right?

3 A. Just to be clear, it's our
4 source program or our proprietary generics
5 program. The ordering program that we talked
6 about, how customers interface with us was
7 called McKesson Connect.

8 Q. You're right, you did make that
9 distinction.

10 So what's indicated here is
11 that prior to this date, these five
12 hydrocodone-containing products were
13 available on McKesson OneStop Generics,
14 right?

15 A. Prior to which date, the...

16 Q. Prior to -- well, it's current
17 as of March 31, 2008. That's the date listed
18 in the chart for each of them, right?

19 A. And I think -- yeah,
20 manufacturing such products and must cease
21 future shipments and interstate commerce on
22 or before March 2008. Following is a list of
23 products.

24 Q. So did McKesson, around this
25 time in 2008, for example, undergo any

1 analysis or investigation of new products to
2 determine whether they were FDA approved
3 before they sold them?

4 A. I don't know.

5 Q. Okay.

6 A. But -- I guess I'm not clear.

7 Is this on distributors and distribution of
8 the products? I'm not clear the intent. It
9 seems to talk to manufacturers, marketing.

10 Q. Right. So if they can't market
11 or manufacture because it's not approved, do
12 you think you guys should be able to
13 distribute it?

14 A. I mean, I'm not sure how
15 product that was in the channel, was with
16 distributors already or potentially in
17 pharmacies already, was impacted by these
18 decisions. I mean...

19 Q. Well, if it's never been
20 approved, it's never been approved, right?

21 A. Well, I don't know if it was --
22 if they were never FDA approved or if there
23 was a change either. I'm not clear on that
24 from this.

25 Q. What is indicated from the

1 first paragraph, from September 28, 2007, the
2 last sentence is: In fact, most of the
3 hydrocodone formulations now marketed to
4 suppress coughs have not been approved.

5 Do you see that?

6 A. I do see where it says that,
7 but I don't know if that -- when that took
8 place or if it's true or not.

9 Q. Okay. Do you have any reason
10 to specifically think that it's not true, in
11 fact, these were approved?

12 A. I don't know either way.

13 Q. Okay. We talked a little bit
14 earlier in the deposition about sales
15 representatives and their interaction with
16 the regulatory department in increasing
17 thresholds, so I want to talk about that a
18 little more specifically.

19 So you would agree with me that
20 due diligence assessments under the CSMP
21 should never be driven by a customer's sales
22 volume, profitability or strategic importance
23 to the company, should it?

24 MS. HENN: Objection to form,
25 compound.

1 A. I don't know that I can say
2 that those would never be any part of any
3 consideration. I mean, volume could be, and,
4 I mean, I would probably take issue with the
5 customer profitability.

6 BY MR. BOGLE:

7 Q. Okay. Well, let me address the
8 compound objection. Let me ask it
9 separately.

10 Do you agree that due diligence
11 assessments under the CSMP should never be
12 driven by a customer's sales volume with
13 McKesson?

14 A. I think I'm having issue with
15 the word "driven." I would agree that they
16 should not be driven, but sales volume could
17 be a component of the analysis that our
18 regulatory team takes into their due
19 diligence.

20 Q. But you shouldn't -- there
21 should never be a decision to provide or not
22 provide a customer product just based on how
23 much volume they buy from you, right?

24 A. I think customers' volume,
25 their purchase history, their patterns, their

1 total prescription volume, are all
2 information that our regulatory team might
3 take into consideration.

4 Q. Okay. You would agree due
5 diligence assessments under the CSMP should
6 not be driven by profitability of the
7 customer for McKesson, right?

8 A. I think our regulatory team is
9 probably better equipped to speak of what
10 they might think of, but in the spirit of
11 your question, I'm not aware that it ever
12 was.

13 Q. Yeah. I'm just asking whether
14 it should be.

15 MS. HENN: Asked and answered,
16 objection.

17 Go ahead.

18 A. I'm not sure that it is, and I
19 think it shouldn't be.

20 BY MR. BOGLE:

21 Q. Okay. How about the strategic
22 importance of the customer to McKesson,
23 should that be a factor in due diligence
24 decisions in your view?

25 MS. HENN: Objection to form.

1 A. I think strategic importance
2 means different things to different people.
3 I think we should make regulatory decisions
4 based on independent, and I think those --
5 the criteria that influence those decisions
6 for our regulatory teams that are responsible
7 for thresholds are pretty clearly spelled
8 out.

9 BY MR. BOGLE:

10 Q. And we talked about this a
11 little bit earlier, but the sales department
12 should never attempt to influence regulatory
13 decisions regarding increasing thresholds for
14 customers, right?

15 MS. HENN: Objection to form.

16 A. I think the program is most
17 effective when we let our regulatory team
18 make independent decisions.

19 BY MR. BOGLE:

20 Q. Right. And that includes not
21 having the sales department weigh in or
22 encourage threshold increases for controlled
23 substances like opioids, right? That should
24 be strictly a regulatory decision, shouldn't
25 it?

1 MS. HENN: Objection to form.

2 A. I think as we covered, having
3 the sales team weigh in, provide information,
4 perspective, could be part of the analysis of
5 our regulatory team, but it isn't --
6 shouldn't have influence. The team should
7 make their independent decision.

8 BY MR. BOGLE:

9 Q. Right. The sales team should
10 not be trying to dictate an outcome under
11 that circumstance, should they?

12 MS. HENN: Objection to form.

13 A. I would prefer that my sales
14 team provide the information and observations
15 requested.

16 BY MR. BOGLE:

17 Q. And not try to dictate an
18 outcome, right?

19 MS. HENN: Objection, asked and
20 answered.

21 A. Depends which outcome they're
22 pursuing. If they have a position on the
23 account that we shouldn't do it, they should
24 influence that outcome. But to the
25 positive...

1 BY MR. BOGLE:

2 Q. I'm sorry, you said to the
3 positive what?

4 A. To influence the team to
5 increase a threshold, I would prefer that
6 didn't happen.

7 Q. Okay. And why is that? Why
8 would you prefer that didn't happen?

9 A. I want my regulatory team to
10 make an independent decision based on the
11 facts and information that they have
12 presented to them.

13 Q. Okay. In 2010, Pennsylvania
14 would have been within your sales region,
15 right?

16 A. Yes. I mean, the eastern half
17 of Pennsylvania, absolutely during 2010.
18 Yeah, all of 2010, I would have had -- I'm
19 sorry, I would have had responsibility for
20 Pennsylvania, coming out of both New Castle
21 and Delran.

22 Q. Okay. And a pharmacy in
23 Pennsylvania named Martella's, are you
24 familiar with them?

25 A. I am.

1 Q. Okay. How are you familiar
2 with them?

3 A. I'm aware that they became a
4 customer of ours -- I'm not sure of the exact
5 year. I believe it was during my time as a
6 vice president of sales. They were a
7 customer who came to us from another
8 distributor, regional distributor in
9 Pennsylvania.

10 Q. Okay. I'm going to hand you
11 what I'm marking as Exhibit 15, which is
12 1.1900. That's MCKMDL00489869.

13 (McKesson-Cavacini Deposition
14 Exhibit 15 marked.)

15 BY MR. BOGLE:

16 Q. There you go, sir.

17 A. Thank you.

18 Q. Okay. I actually want to start
19 on the page .2 in this document. And there's
20 an e-mail towards the bottom -- or starts in
21 the middle of the page, from SharePoint,
22 October 19, 2010.

23 Do you see that?

24 A. I do.

25 Q. Okay. And the subject is

1 Status of Threshold Change Request for
2 Martella's Pharmacy.

3 Do you see that reference?

4 A. I do.

5 Q. If you see on this date,
6 there's a change in several controlled
7 substance thresholds, one of which, at the
8 bottom there, is for oxycodone, changing the
9 number to 12,000 doses.

10 Do you see that?

11 A. This 4-digit number, oxycodone,
12 change this to the number of doses, 12,000.

13 Q. Right. And it's noted in the
14 body of the e-mail that this was approved by
15 Dale Nusser at New Castle Distribution
16 Center, and Michael Oriente.

17 Do you see that? It's the
18 first paragraph here.

19 A. I do. I guess I'm just a
20 little confused because .3 seems to have a
21 signature line, Thank you. Michael.

22 So I mean, I get where it says
23 it comes from SharePoint, but it also looks
24 to be -- have a signature line from Michael
25 Oriente, the director of regulatory affairs,

1 which is confusing to me.

2 Q. I can't speak to that part.

3 This is how it was produced.

4 A. Okay. Yeah.

5 Q. But I guess, back to my
6 question though: Do you see where in the
7 body of the e-mail it's noted that this --
8 these increases, including the one we just
9 talked about for oxycodone, were approved by
10 Dale Nusser and Michael Oriente on
11 October 19, 2010.

12 Do you see that?

13 A. I see where the e-mail states
14 that they were approved by Dale and Michael
15 Oriente.

16 Q. Okay. And then if you go to
17 the e-mail above that, there's an e-mail from
18 Dale Nusser to John Kuczynski where he says:
19 Martella's is ready to go for ordering.
20 Michael approved the TCR with no questions.

21 Do you see that at the top of
22 page 2?

23 A. I do.

24 Q. Okay. And then if you follow
25 it up from there, John Kuczynski writes back

1 on October 19, 2010 and says: What about the
2 overall thresholds? Is he adjusting
3 everything?

4 To which there's a response
5 from Dale Nusser on October 19th above that
6 where he says: Michael didn't say. I will
7 keep a close eye on them. If they do happen
8 to show up on the 80% report, I will do the
9 TCR immediately (if you don't mind).

10 Do you see that?

11 A. I do.

12 Q. And this 80% report, that's
13 those threshold warning reports we talked
14 about earlier, right?

15 A. I'm not a hundred percent sure
16 what is being referenced here as the 80%
17 report.

18 Q. Okay. If you see John
19 Kuczynski's response at the very top back to
20 Dale Nusser, he says: Waiting for an item to
21 show up at 80% isn't going to work. They
22 omitted on an item yesterday before the 80%
23 report came out. We need to adjust their
24 numbers across the board. Please work with
25 Michael to get this issue resolved. We can't

1 be in a reactionary mode right now with them.

2 Do you see that?

3 A. I do see where that's written.

4 Q. Okay. And I think we talked
5 about this before. Mr. Kuczynski at this
6 point in time would have been a sales
7 representative that you supervised, right?

8 A. He would have been on my team.
9 During periods of time Patrick Soos, we
10 talked about, was the district sales manager
11 in that market, he might have been reporting
12 right to Patrick and Patrick reported to me.
13 But would have been in my organization.

14 Q. Okay. Now, this last e-mail we
15 read at the top here, do you think it's
16 appropriate for a sales representative to be
17 instructing somebody at the operations level,
18 Dale Nusser in this example, to tell
19 regulatory they need to be proactively
20 increasing thresholds?

21 A. I don't agree that that's what
22 it said. He's asking a member of our
23 operations team to work with a member of our
24 regulatory team so that two-check system, to
25 work with Michael and get it resolved, and

1 let's try not to be reactionary.

2 Q. What he says is: We need to
3 adjust their numbers across the board.

4 Right?

5 A. I do see where that's written.

6 Q. Okay. He says: We can't be in
7 a reactionary mode right now with them.

8 Right?

9 A. That's what he wrote.

10 Q. Okay. Is that simply providing
11 an observation of what he's seen at the
12 pharmacy, in your view?

13 A. I think he's encouraging that
14 we work with our regulatory team to try and
15 get the issue resolved. I'm not sure what
16 else accompanied this. I'm not sure the
17 reason for the request.

18 Q. But I thought we just talked
19 about the fact that in your view, your sales
20 team should not be encouraging increased
21 thresholds for any customers. That should be
22 strictly a regulatory decision, right?

23 A. And again, it seems that John
24 understood that as well, that it's going to
25 be Michael Oriente's decision here.

1 Q. Okay. So as long as it's
2 Michael Oriente's decision ultimately, you
3 think it's okay for the sales representative
4 to attempt to encourage a specific outcome
5 like this of increasing the thresholds across
6 the board?

7 A. I see what John wrote. I'm
8 not -- you know, it's hard for me to
9 speculate eight years ago what the other
10 context was and what John was trying to
11 communicate.

12 Q. So you didn't know the other
13 context was this company -- this customer was
14 threatening to leave you guys if you didn't
15 increase their thresholds?

16 MS. HENN: Objection to form,
17 lacks foundation.

18 A. I don't know that I'm aware. I
19 don't know where we were in our relationship
20 with Martella's in 2010.

21 BY MR. BOGLE:

22 Q. Well, do you recall Martella's
23 at any point in time threatening to leave you
24 guys if you didn't increase their controlled
25 substance thresholds the way they wanted you

1 to?

2 A. I remember Martella's being a
3 demanding customer. Most of my interactions
4 with Martella's was around their pharmacy
5 system that they also bought from us and some
6 of their frustration with that as well.

7 Q. Okay. Well, let's take a look
8 at Exhibit 16, which is 1.1842, and that's
9 MCKMDL00495740.

10 (McKesson-Cavacini Deposition
11 Exhibit 16 marked.)

12 BY MR. BOGLE:

13 Q. So you see here I'm looking at
14 the first page. In the middle of the page is
15 an e-mail from Jennifer Melvin to a group of
16 individuals on October 21, 2010.

17 Do you see that?

18 A. I do.

19 Q. This is actually -- if you go
20 back in your previous exhibit, this is the
21 day after where we left off on the previous
22 exhibit.

23 Do you see that?

24 A. Yeah, October 19th,
25 October 20th, October 21st.

1 Q. Okay. So looking at that
2 middle e-mail from Jennifer Melvin, she says:
3 ServiceFirst has began calling on all of the
4 Northeast Region's CSMP 85-99.99% threshold
5 calls this month. Evidently, Martella's was
6 called by the sales rep last month and then
7 both ServiceFirst and the sales rep this
8 month and is upset that his thresholds are
9 still not where he feels they should be.
10 Today ServiceFirst called on hydrocodone, the
11 account was at 91.85%, so they also would
12 have received a notice on their invoice.
13 ServiceFirst only makes one call per month to
14 the account.

15 And then it says: We wanted
16 you to know that the account was very unhappy
17 and threatened to pull his business from
18 McKesson. Please review and see if there's
19 anything else that may need to be looked at
20 regarding his thresholds.

21 Do you see that?

22 A. I do.

23 Q. Okay. And then the e-mail
24 above that, you're a recipient of, right?

25 A. Looks like it was sent to me,

1 yes.

2 Q. Right. And so just kind of
3 understanding how e-mails work, once you get
4 that one, you get to see all the e-mails in
5 the chain below it, right?

6 A. I mean, I would -- I -- it
7 appears these two e-mails were linked
8 together, if that's the chain you're
9 referencing.

10 Q. It is. Okay.
11 So the next e-mail that I'm
12 looking at at the top of the first page is
13 from John Kuczynski, October 22nd, 2010.

14 And in the second paragraph, he
15 says: I'm meeting with Martella's in about
16 an hour and I'm going to reassure him that we
17 are addressing the issue. Please make sure
18 every effort is made to adjust their
19 threshold levels prior to them hitting the
20 85% level to prevent omits of SF or -- or SF
21 from calling them.

22 Do you see that?

23 A. I do.

24 Q. Okay. And the concept of
25 omits, do you understand what that means?

1 A. I believe I do.

2 Q. Okay. And what does that mean?

3 A. My understanding is that if the
4 threshold is set and the customer exceeded
5 that threshold once they hit it, that we
6 would stop shipping the order, that it would
7 omit. The customer would not receive the
8 product.

9 Q. So what Mr. Kuczynski is asking
10 for in this e-mail is that every effort be
11 made to increase their thresholds prior to
12 them hitting the 85% mark in a given month to
13 ensure they don't get their orders blocked,
14 right?

15 A. I see what John wrote, where he
16 says that please make sure every effort is
17 made to adjust their threshold prior to
18 hitting the 85% level and to prevent omits.

19 Q. And again, this is in the face
20 of the e-mail below from the day before, the
21 customer saying if he didn't get these
22 thresholds worked out in the way he wants
23 them, he's threatening to leave the company
24 as far as business, right?

25 A. It appears that's what Jennifer

1 was conveying, that the customer stated that,
2 threatened to pull his business from
3 McKesson.

4 Q. And this would be an instance,
5 for example, in 2010, if Mr. Kuczynski loses
6 this account, he loses a portion of his
7 potential bonus, right?

8 MS. HENN: Objection to form,
9 lacks foundation.

10 A. But I guess what I take from
11 this though is that the decision is
12 independent, and our regulatory decision, you
13 know, would have the information, and that
14 lies with them.

15 What the customer said or what
16 John said, I'm not sure that it had any
17 influence on the regulatory decision that
18 appeared Michael Oriente was going to make.

19 MR. BOGLE: Move to strike as
20 nonresponsive.

21 BY MR. BOGLE:

22 Q. My question was simply: In
23 2010, based on the incentive plans we looked
24 at earlier, if this account was lost the way
25 the customer is threatening for you guys to

1 lose it, that would impact Mr. Kuczynski's
2 bonus, wouldn't it?

3 A. I would say not necessarily. I
4 mean, if this account left us because he was
5 exerting pressure on the sales team and
6 potentially the regulatory affairs team to
7 make a decision, we didn't make that decision
8 and the customer left us, I would probably
9 consider moving that out of the rep's
10 territory. We did the right thing.

11 Q. Okay. Even during the time
12 frame where there was stated in the plan we
13 looked at earlier to be no exceptions to the
14 loss of customers bonus, the retention bonus?

15 A. I understand that's what the
16 document said, but I think, as we discussed,
17 that's not my recollection of the practice.

18 Q. Okay. So at any rate, we do
19 see Mr. Kuczynski urging people, including
20 people in the regulatory department, to
21 proactively increase these thresholds before
22 they hit the 85% mark, right?

23 A. Again, I don't believe that's
24 what John said. He said we can't be in
25 reactionary mode and to please work with

1 Michael to get the issue resolved.

2 Q. And he specifically -- the
3 e-mail we're looking at here says: Please
4 make sure every effort is made to adjust
5 their threshold levels prior to them hitting
6 the 85% level to prevent omits.

7 Right? That's what he says.

8 A. Please make sure every effort.
9 If we have the right information, if the
10 program supports it, that's a decision for
11 regulatory to make, make every effort that
12 it's done quickly. But make the -- make the
13 decision regulatory's going to make.

14 Q. Okay. Do you see any -- you
15 added a lot of extra language there that
16 doesn't appear in this e-mail, does it?

17 A. It says: Please make sure
18 every effort is made to adjust their
19 threshold levels prior to them hitting the
20 80% level and to prevent omits.

21 Q. Right. And if you see in the
22 initial e-mail that I read to you, the two
23 items that are showing up in the chart listed
24 below are both hydrocodone.

25 You see that?

1 A. Yeah, I think the e-mail
2 referenced that they were -- that
3 ServiceFirst had made a call on hydrocodone.
4 There were two hydrocodone products listed.

5 Q. Right. So you think in this
6 instance that Mr. Kuczynski was well within
7 his right to urge the regulatory department
8 to increase these thresholds to prevent
9 omits?

10 MS. HENN: Objection to form.

11 BY MR. BOGLE:

12 Q. That that was well within his
13 right as a sales representative. Is that
14 your testimony?

15 MS. HENN: Objection to form.

16 A. It's hard to look back eight
17 years ago at the context of the e-mail. I
18 see exactly what John said, and, you know, my
19 regulatory team I'm confident would make an
20 independent decision based on the information
21 they had.

22 BY MR. BOGLE:

23 Q. But wouldn't you feel more
24 confident if they weren't having people exert
25 pressure on them to make those decisions in

1 one way or the other?

2 MS. HENN: Objection to form,
3 lacks foundation.

4 A. As I read the e-mail, it's
5 every effort is made that put this at the
6 priority, do the analysis, make the decision.
7 I cannot -- it's hard for me to speak for
8 John. Again, it was written ten years ago.
9 I'm looking at one e-mail, but that's how I
10 take it.

11 BY MR. BOGLE:

12 Q. My question just was: Wouldn't
13 you feel more comfortable that the decision
14 from regulatory was an independent one if
15 there weren't people in the sales department
16 exerting pressure on them to make a decision
17 one way?

18 MS. HENN: Objection, asked and
19 answered.

20 A. I am comfortable it's an
21 independent one.

22 BY MR. BOGLE:

23 Q. So it's okay for Mr. Kuczynski
24 in your mind to exert the kind of pressure
25 he's doing in this e-mail?

1 MS. HENN: Objection to form,
2 lacks foundation.

3 A. I disagree with how -- with the
4 context you're putting around the e-mail.

5 BY MR. BOGLE:

6 Q. Okay. So you don't think he's
7 exerting any undue pressure here in that
8 e-mail; is that your testimony?

9 A. My testimony is I don't believe
10 it would have influence on the decision.

11 Q. Okay. That's not my question.

12 My question is: Do you or do
13 you not believe he is exerting improper
14 influence here? I'm not asking whether they
15 listened to him or didn't listen to him. We
16 can ask somebody else about that.

17 I'm asking you whether, as the
18 guy who was supervising him at the time, you
19 think it was appropriate for him to try to
20 exert that kind of influence in an e-mail?

21 MS. HENN: Objection to form,
22 lacks foundation.

23 A. It's hard for me to say. You
24 know, I -- I probably would have written the
25 e-mail differently.

1 BY MR. BOGLE:

2 Q. Okay. And this specific -- the
3 thresholds for Martella's, do you have an
4 understanding as to what happened to them in
5 the days following this, for hydrocodone?

6 A. Back in 2010?

7 Q. Right. Do you know what
8 happened after this as far as their
9 hydrocodone thresholds?

10 A. I'm not aware of what decision
11 was made relative to the hydrocodone
12 thresholds.

13 Q. Okay. I'm going to hand you
14 what I'm marking as Exhibit 17, which is
15 1.1843, and that's MCKMDL00492040.

16 (McKesson-Cavacini Deposition
17 Exhibit 17 marked.)

18 BY MR. BOGLE:

19 Q. If you go to the e-mail on
20 page .2, it's again another one from
21 SharePoint. We're now three days later,
22 October 25, 2010, and the subject is Status
23 of Threshold Change Request for Martella's
24 Pharmacy.

25 Do you see that?

1 A. I do, yes.

2 Q. Okay. And you see there, below
3 that there are increases to thresholds that
4 were approved on this date for several items,
5 including for hydrocodone being increased by
6 20%.

7 Do you see that?

8 A. I see that hydrocodone and
9 several other products are listed here.

10 Q. And another one specifically is
11 methadone, it also increased by 20%, right,
12 on this date?

13 A. Methadone is listed as well.

14 Q. Both opioid products as you
15 understand it, right?

16 A. I think as I testified earlier,
17 I'm not 100% sure if hydrocodone and
18 methadone are opioids. I mean, I'm aware
19 they're controlled substances.

20 Q. Okay. And then if you go --
21 I'm now on the first page of the document.
22 There's an e-mail from Blaine Snider on
23 October 26, 2010. It's the second e-mail
24 from the top.

25 You see where I'm at?

1 A. Yes.

2 Q. And here he's talking to
3 Mr. Kuczynski, and he says: Can you get
4 Michael -- what Michael requested? The usage
5 was incomplete. I believe Dale said
6 something. I upped them to about the highest
7 I've ever done anyone as per previous
8 e-mails. Will you be able to call to
9 discuss?

10 Do you see that?

11 A. I do see where Blaine wrote
12 that.

13 Q. And increasing thresholds, is
14 that something that in 2010 would have been
15 routinely done by the operations side of the
16 company rather than regulatory?

17 A. I can't say for sure what the
18 process was in 2010.

19 Q. Did folks in operations like
20 Mr. Snider have the authority to increase
21 thresholds by themselves?

22 A. I'm not sure.

23 Q. Okay.

24 A. And I'm also -- I mean, it says
25 I upped them.

1 Q. Right.

2 A. Okay. I'm not exactly sure
3 what that refers to, too.

4 Q. You don't understand that
5 refers to increasing the thresholds, upping
6 the thresholds?

7 A. I mean, thresholds isn't listed
8 in the e-mail, so, I mean, it's in the
9 subject line.

10 Q. Right.

11 A. And it references again that
12 other SharePoint e-mail that says a request
13 on 10/25 was submitted and approved by
14 Michael Oriente, so I -- I mean, I don't know
15 how Blaine's e-mail relates to the one that
16 started the chain that apparently again came
17 from Michael that referenced the hydrocodone
18 increase.

19 Q. Now, this customer, Martella's,
20 are you aware that just in the past few
21 months the owner of that pharmacy was
22 indicted for diversion of opioids?

23 A. I'm not aware of the specific
24 timing of when I became aware, but I am aware
25 that the store is facing action and has some

1 charges against it, yes.

2 Q. Right. And you know those
3 charges are specifically related to
4 allegations that they've been, for years,
5 diverting opioids, right?

6 A. I would like to see a copy of
7 the complaint and allegations against the
8 store.

9 Q. Okay.

10 A. I'm not --

11 Q. Okay. Let's look at a couple
12 of things on this then. I'm going to hand
13 you first what I'm marking as Exhibit 18,
14 which is 1.1905. This is a public document,
15 so no Bates number.

16 (McKesson-Cavacini Deposition
17 Exhibit 18 marked.)

18 BY MR. BOGLE:

19 Q. There you go, sir.

20 A. Thank you.

21 Q. You see here this is a press
22 release from November 2nd, 2018 from the
23 Department of Justice.

24 Do you see that?

25 A. I do, yes.

1 Q. Okay. And the title is
2 Johnstown Pharmacist Charged in 109-Count
3 Indictment with Illegally Creating Bogus
4 Prescriptions and then Dispensing the Drugs.

5 Do you see that reference?

6 A. Is that -- I don't. I'm sorry.

7 Q. Yeah. It's the title. It's
8 sort of the bolded title there.

9 A. Oh, I'm sorry.

10 Q. I was just reading the bolded
11 title to you.

12 A. Oh, bogus prescriptions and
13 then dispensing them.

14 Q. Yeah. And so it goes on to
15 say: A Johnstown, PA pharmacist has been
16 indicted by a federal grand jury in
17 Pittsburgh on charges of dispensing and
18 distributing controlled substances and
19 conspiring to distribute and dispense
20 controlled substances, United States Attorney
21 Scott W. Brady announced today.

22 Then skipping down to the third
23 paragraph, it says: According to the
24 indictment presented to the court, Martella
25 owned and operated Martella's Pharmacy

1 located on Franklin Street in Johnstown.

2 That's the same pharmacy we've
3 just been talking about from these 2010
4 e-mails, right?

5 A. I'm aware that the Martella's
6 that was our customer had locations in
7 Johnstown. I'm not familiar with the
8 Franklin Street. I don't know the address of
9 the pharmacy.

10 Q. Do you have any reason to
11 disagree that this is the same pharmacy we
12 were just talking about in these 2010
13 e-mails?

14 A. I do not. I believe it is.

15 Q. Okay. The indictment alleges
16 that Martella, a pharmacist, conspired with
17 Dr. Peter James Ridella, who previously
18 pleaded guilty, and an individual named as
19 J.R., to create and submit unlawful
20 prescriptions for oxycodone; oxycodone and
21 acetaminophen, also known as Percocet;
22 oxymorphone, also known as Opana; morphine
23 sulfate, also known as MS Contin; and
24 hydrocodone and acetaminophen, also known as
25 Vicodin, and then unlawfully dispensed those

1 controlled substances to other persons.

2 Do you see that?

3 A. I do.

4 Q. It says: The law provides for
5 a maximum per count sentence of 20 years in
6 prison and a fine of a million dollars or
7 both.

8 Do you see that there?

9 A. I do.

10 Q. And what was laid out in this
11 indictment covered a large period of time
12 that this -- that Martella's was a customer
13 of McKesson, right? Are you aware of that?

14 MS. HENN: Objection, lack of
15 foundation.

16 A. I don't know that. I don't
17 know -- I don't see that there's any dates or
18 time periods referenced here in the document
19 in front of me.

20 BY MR. BOGLE:

21 Q. All right. I'm going to hand
22 you what I'm marking as Exhibit 19, which is
23 1.1904, and again, this is a nonproduction
24 document so no Bates number.

25 (McKesson-Cavacini Deposition

1 Exhibit 19 marked.)

2 BY MR. BOGLE:

3 Q. So what I have for you here is
4 the actual indictment for Mr. Martella. You
5 see this is -- the stamp filed date on this
6 is October 30, 2018. Do you see that kind of
7 in the right-hand side of the page?

8 A. 10/30/18.

9 Q. Yeah. Either spot says the
10 same thing.

11 A. Fine.

12 Q. So getting to the issue of how
13 long this conduct had been ongoing per the
14 indictment, if you can go to the last page of
15 the document, page 10.

16 You see here in the second
17 paragraph it indicates that the illegal
18 dispensing of all the opioid products I just
19 read to you occurred from April 2011 and
20 continued thereafter to in or around
21 June 2016.

22 You see that?

23 A. I do see where it says from in
24 and around April 11 to June 2016.

25 Q. And that entire period of time

1 Martella's was a customer of McKesson, right?

2 MS. HENN: Objection, lacks
3 foundation.

4 A. I'm not sure.

5 BY MR. BOGLE:

6 Q. Are you aware of, if they
7 weren't, when the account was closed?

8 A. I'm not.

9 Q. Okay. Per the e-mails we just
10 looked at, they clearly were a newly
11 onboarded customer as of 2010, late 2010,
12 right?

13 MS. HENN: Objection, lacks
14 foundation.

15 A. I don't know that that was
16 referenced anywhere in the e-mail, when they
17 started with us or when our relationships
18 with Martella's started.

19 BY MR. BOGLE:

20 Q. We can go back to them if we
21 need to, but the e-mails that we looked at
22 show that as of late 2010, they're certainly
23 a customer of McKesson's, right?

24 A. I think it shows that as of
25 2010 we had a relationship with Martella's

1 Pharmacy.

2 Q. Right. And a relationship that
3 included providing them opioid products,
4 right?

5 A. Based on what I saw here, it
6 appeared we had thresholds set for controlled
7 substances. I don't know what we shipped
8 them.

9 Q. Okay. But we saw, certainly in
10 e-mails we looked at, increasing of
11 thresholds for these two different opioid
12 products, methadone and hydrocodone, right?

13 A. The e-mail on 10/25 states that
14 a threshold increase had been approved on
15 five products, two of which were hydrocodone
16 and methadone.

17 Q. So after this e-mail exchanges
18 we went through in October 2010, do you have
19 a specific awareness of McKesson thereafter
20 ceasing selling to Martella's?

21 A. I'm not aware of our history
22 and relationship with Martella's and how it
23 evolved over time.

24 Q. Okay. Just to close this final
25 point then, let me hand you what I'm marking

1 as Exhibit 20, which is 1.1902.

2 (McKesson-Cavacini Deposition
3 Exhibit 20 marked.)

4 BY MR. BOGLE:

5 Q. This is MCKMDL00340046. Sorry.

6 A. Thank you.

7 Q. Okay. So I just asked you
8 about whether, leading up to this indictment,
9 Martella's was a customer of McKesson. You
10 see here this is an investigative report
11 dated December 15, 2016.

12 Do you see that?

13 A. Yeah, I don't know that I've
14 seen this document before, but I do see where
15 it says Regulatory Investigative Report and
16 it's dated December 15th, 2016.

17 Q. Yeah. And I'm only showing you
18 this to deal with the issue of whether they
19 were a customer or not.

20 A. Okay.

21 Q. In the Details section, it
22 says: This report is in reference to a DEA
23 administrative subpoena received on
24 December 13, 2016 for all invoicing records
25 for Martella's Pharmacy from January 1, 2015

1 through November 30, 2016.

2 And then it lists the address,
3 which is the same address that we just saw on
4 the DOJ press release, right, the Franklin
5 Street address.

6 A. I don't know what the number
7 was in, but Franklin Street in Johnstown, PA.

8 Q. So this indicates at least here
9 that the DEA believed they were a McKesson
10 customer at least from 2015 to 2016 or they
11 wouldn't have presumably subpoenaed the
12 records, right?

13 MS. HENN: Objection to form,
14 calls for speculation.

15 A. I don't know what the DEA
16 believed. It clearly states the DA sent us a
17 subpoena for that time.

18 BY MR. BOGLE:

19 Q. Right. And the DEA can
20 specifically see, for example, controlled
21 substance sales that you would have made to
22 Martella's during that time frame through
23 ARCOS data, right?

24 A. I believe we submit our ARCOS
25 data which gives the DEA a view of every sale

1 that we make to every customer.

2 Q. Right. Including to Martella's
3 during the time frame referenced here, right?

4 A. I would assume that Martella's
5 was included in our ARCOS submissions if they
6 were a customer.

7 Q. Okay. And we've talked about
8 sales activities from the sales force itself
9 in selling McKesson as a company and the
10 products they offer, but there's another
11 component to sales and marketing at McKesson
12 that includes marketing manufacturers'
13 products to customers, right? Specific
14 marketing of manufacturers' products to
15 pharmacy customers, right?

16 A. I mean, I'm aware of programs
17 where we work with manufacturers to provide
18 information and access to our pharmacy
19 customers, deliver messaging. So if that's
20 marketing, yes.

21 Q. Yeah. And you're aware that
22 over the time you've been with the company,
23 there have been various deals struck for
24 opioid products for the sales and marketing
25 arms of McKesson to market for manufacturers'

1 opioid products, right?

2 MS. HENN: Objection to form.

3 A. You know, I don't recall, and I
4 don't know that I've been involved in the
5 negotiations of those specific programs and
6 what programs might be involved, what
7 products might be involved in those programs.

8 BY MR. BOGLE:

9 Q. Yeah. And we'll get to the
10 specific marketing arrangements. I just want
11 to just start with the preface that you
12 understand that these sort of marketing
13 agreements have been made for opioid products
14 while you've been at the company, right?

15 MS. HENN: Objection --

16 BY MR. BOGLE:

17 Q. You've been privy to that
18 information, haven't you?

19 MS. HENN: Objection to form,
20 vague and compound.

21 A. I'm not sure that I could list
22 any of the products that were ever included
23 in any of the campaigns that we did with our
24 pharmacy customers.

25 ///

1 BY MR. BOGLE:

2 Q. Okay. Well, let me just hand
3 you this. Exhibit 21 which is 1.2137.
4 That's MCKMDL00695128.

5 (McKesson-Cavacini Deposition
6 Exhibit 21 marked.)

7 MS. HENN: And we're again at
8 an hour, so if you want to take a
9 break.

10 MR. BOGLE: I'm on a new
11 subject. That's fine.

12 MS. HENN: Yeah.

13 THE VIDEOGRAPHER: Okay. We're
14 off the record at 2:06 p.m.

15 (Recess taken, 2:06 p.m. to
16 2:15 p.m.)

17 THE VIDEOGRAPHER: Back on the
18 record at 2:15 p.m.

19 BY MR. BOGLE:

20 Q. Okay. Mr. Cavacini, we had
21 left off, as I recall it, starting a
22 discussion about McKesson's activity in
23 marketing opioid products for manufacturers.

24 Do you recall us talking about
25 that generally?

1 A. I remember you asking questions
2 along that line.

3 Q. Right. Okay. So I just marked
4 Exhibit 21, which is 1.2137. That's
5 MCKMDL00695128.

6 And, Mr. Cavacini, what I've
7 given you here is a series of e-mails. We're
8 going to kind of start in date order, which
9 means towards the back, so starting at
10 page .3.

11 At the bottom of this page is
12 an e-mail from the SMS Analytics Group,
13 November 7, 2013, to a Dale Harris and a
14 Meredith Hardee, subject being Campaign
15 3578-AMI-Mallinckrodt Hydrocodone has been
16 released.

17 Do you see that?

18 A. I do, yes.

19 Q. Okay. And in the body of the
20 e-mail it says: McKesson OneStop Generics
21 Campaign 3578-AMI-Mallinckrodt Hydrocodone,
22 has been launched. The campaign will be
23 effective from 11/8/2013 through 11/15/2013.

24 And then it goes on to describe
25 the campaign. It says: Inform ISMC

1 customers with purchase history of Watson
2 hydrocodone of the savings on Mallinckrodt
3 hydrocodone. There were supplier-initiated
4 price increases of 10 to 30% on A/C-slot
5 Watson hydrocodone.

6 What does A/C-slot stand for?

7 A. I believe it stands for
8 alternate choice.

9 Q. Okay. A/C-slot Watson
10 hydrocodone in the last couple of months, on
11 top of an already higher price compared to
12 Mallinckrodt A-slot equivalents. Combine
13 campaign message with industry news regarding
14 FDA recommendation on high-dosage
15 acetaminophen combination drugs.

16 And then there's a main
17 objectives after that, and there's a couple
18 of bullet points I want to look at.

19 The fourth one says: Convert
20 Watson sales to Mallinckrodt. And then it
21 says: Explain how purchasing generics from
22 McK can increase profitability.

23 Do you see that?

24 A. I do, in addition to the other
25 bullet points in front and after, but --

1 Q. Sure. Sure.

2 Then there's some e-mails that
3 follow this introduction of this company.
4 There's an e-mail from Dale Harris back that
5 says: Thought you might like to see that
6 we're pushing hydrocodone with our ISM calls
7 again.

8 To which Tom Smith on
9 November 8th, 2013 responds: This is silly.
10 Do you see that?

11 A. I do see where Dale and Tom
12 wrote that.

13 Q. And Tom's e-mail on November 8,
14 2013 actually copies you at that point,
15 right?

16 A. Appears he did, yes.

17 Q. Okay. And your job as of that
18 time frame would have been as vice president,
19 general manager in Memphis, right?

20 A. Correct.

21 Q. Okay. And then you actually
22 respond to his e-mail on page .2 at the
23 bottom. Do you see that response from
24 November 8, 2013?

25 A. I see where I forwarded it to

1 Susan. I don't know that I responded to Tom.

2 I don't see that.

3 Q. No, what I'm saying is you sent
4 an e-mail to Susan Petrus on November 8, 2013
5 about this same subject.

6 Do you see that?

7 A. Yes, I'm sorry. I thought you
8 said where I responded to Tom. I don't see
9 that.

10 Q. If I did, that's not what I
11 meant to say, so that's fine.

12 A. Okay.

13 Q. In the third sentence there,
14 you say: I kind of agree with Tom - the
15 timing is less than optimal and our ISMs need
16 to be prepared for some tough customer
17 reaction. I agree with the concept of this
18 campaign, just question the timing.

19 Do you see that?

20 A. I do see where I wrote that.

21 Q. Why in your view is the timing
22 less than optional to do such a campaign
23 for Mallinckrodt hydrocodone?

24 A. As I think back to this time
25 frame, I believe it was at a time where we

1 had made some changes to our threshold
2 programs, how we were calculating those
3 thresholds and adjustments for certain
4 customers, and, you know, it seems to be that
5 my concern was that the ISMs might be calling
6 on an awareness campaign, making customers
7 aware of a lower-priced alternative. There
8 were some that were probably feeling
9 frustration because the thresholds had been
10 adjusted.

11 Q. And the ISMs are the
12 independent pharmacies, is that right,
13 independent, small-mediums?

14 A. Well, ISMC, right, would be
15 independent small-medium chains, our
16 community pharmacy customers.

17 Q. Right. All right. And then
18 Susan Petrus responds on November 8th, 2013
19 above that. She says: My understanding is
20 that we should not be doing any campaigns on
21 controlled substances. Apparently, our
22 process for preventing this is not fool
23 proof. We need to understand where the
24 breakdown is and fix it. Also, pull back on
25 this campaign.

1 Do you see that?

2 A. I do. And Josh followed up, it
3 hadn't even started yet and wouldn't start,
4 so...

5 Q. So on this -- well, first off,
6 Susan Petrus, what was her job role at this
7 time?

8 A. Susan currently leads, you
9 know, our sales effectiveness and customer
10 care groups. I believe she had the same role
11 at the time. I don't believe her
12 responsibilities have changed much in the
13 last five to six years.

14 Q. Would she be someone overseeing
15 campaigns like this for a manufacturer of
16 products?

17 A. I think the teams that would
18 have made the calls, our customer care teams,
19 would have been under her responsibility.
20 The actual formation of the campaigns, I
21 don't believe so but can't say for sure.

22 Q. So at this point in 2013, was
23 there an internal policy not to do
24 promotional campaigns on controlled
25 substances?

1 A. I mean, Susan seems to indicate
2 that was her understanding. It's hard for me
3 to say.

4 Q. Okay. Now, so if we go to the
5 first page at the bottom, there's an e-mail
6 from an Allegra Riley back to Susan and
7 others, including you, where it's stated:
8 You are correct that we cannot campaign
9 controlled substances.

10 Do you see that?

11 A. She's responding to Susan and
12 she states that.

13 Q. Okay. And then you actually
14 respond at the top of this e-mail chain again
15 and say: If we agree that this type of
16 awareness campaign is acceptable (it might
17 be), I just think the timing is not right.

18 Do you see that?

19 A. I do, and I think Allegra also
20 stated in her e-mail that we didn't view this
21 as a campaign, you know, because she says we
22 are not incenting our customers to purchase
23 more with any type of discount.

24 This was informational as I
25 read it, that in the first e-mail that you

1 read that there was a pricing activity taken
2 by one manufacturer, a price increase, and we
3 were making customers aware that had
4 purchase -- purchase history of these items
5 that there was a lower-priced alternative.

6 And it seems to be the feeling
7 that this type of an awareness campaign is
8 appropriate or was appropriate at the time,
9 and I wasn't -- if I read my e-mail again,
10 not saying one way or the other. I just
11 thought that the timing relative to the
12 changes in thresholds we had made for
13 customers probably was going to set our
14 customer service team up for some hard
15 conversations.

16 Q. And the threshold changes
17 you're referring to are in response to the
18 DEA investigation of McKesson that was going
19 on in November 2013, right?

20 A. I'm not aware of the
21 connection --

22 Q. Okay.

23 A. -- one way or the other.

24 Q. You don't know what prompted
25 those changes in late 2013?

1 A. No, we were constantly
2 evaluating and evolving our program.

3 Q. Okay. But you don't recall any
4 specific changes in late 2013 in response to
5 DEA investigation of McKesson as to its
6 opioid distribution activities?

7 A. I remember --

8 MS. HENN: Objection, asked and
9 answered.

10 Go ahead.

11 A. I remember changes in 2013. I
12 mean, I think it was the summer of 2013 as I
13 reflect back on that time frame. But I'm not
14 aware of any connection or correlation or
15 what the motivation was for those changes.

16 BY MR. BOGLE:

17 Q. So were you aware that McKesson
18 was being investigated by DEA at this point
19 in time, in November 2013?

20 MS. HENN: Objection, lacks
21 foundation.

22 A. You know, I'm not sure at that
23 moment what I was aware of and when I became
24 aware of it.

25 ///

1 BY MR. BOGLE:

2 Q. And this campaign, this
3 proposed here that we've gone through, is
4 certainly intended to have McKesson encourage
5 customers to at the very least switch to the
6 Mallinckrodt version over at least the Watson
7 version of hydrocodone, right? That's what's
8 laid out in the first e-mail we read, isn't
9 it?

10 MS. HENN: Objection to form.

11 A. I take it that we were trying
12 to make them aware that there was a
13 lower-priced alternative on an equivalent
14 product, and let them make their decision.
15 It does say convert Watson sales to
16 Mallinckrodt, the lower-priced product.

17 BY MR. BOGLE:

18 Q. Were you aware that well prior
19 to 2013 the DEA had a longstanding view that
20 promotion of controlled substances should not
21 be done by distributors?

22 MS. HENN: Objection to form,
23 lacks foundation.

24 A. I'm not aware of the DEA's
25 position, no.

1 BY MR. BOGLE:

2 Q. Okay. That was never conveyed
3 to you?

4 MS. HENN: Same objection.

5 A. I don't remember specific
6 conversations relative to promotion, but, you
7 know, this one was an awareness campaign, as
8 I think it was described.

9 BY MR. BOGLE:

10 Q. Does McKesson currently engage
11 in promotional activities for opioid
12 manufacturers?

13 A. I don't know.

14 Q. Is that not under your umbrella
15 as COO? Would the people doing that not
16 report up to you ultimately?

17 A. No. Our brand management teams
18 and our marketing teams do not report up
19 through me.

20 Q. Who do they report up through?

21 A. Marketing, our U.S. Pharma
22 marketing team reports to Wendy Brauner, and
23 I believe brand and product management
24 currently reports to Chris Dimos.

25 Q. Can you spell that last name on

1 that one?

2 A. Dimos, D-I-M-O-S.

3 Q. Are you familiar with the
4 concept of chargebacks?

5 A. Generally, yes. Not an expert.

6 Q. Okay. I'm sorry. Make sure
7 you're finished with your answer.

8 What is your working
9 understanding of what a chargeback is?

10 A. That there can be a list price
11 and a contract price for a product, and then
12 the chargeback reconciles the difference
13 between the list price and what is actually
14 paid.

15 Q. Okay. Do you have any
16 awareness of the exchange of sales
17 information with McKesson and the
18 manufacturer for whom the product is sold?

19 MS. HENN: Objection to form,
20 vague.

21 THE WITNESS: Could you repeat
22 the question.

23 MR. BOGLE: Yeah.

24 BY MR. BOGLE:

25 Q. So, for example -- let me back

1 up and start from a different spot.

2 A. Okay.

3 Q. Are you aware that McKesson
4 enters into agreements with manufacturers for
5 whom they sell their products to provide them
6 information about the people they're selling
7 the products to?

8 A. I would say I think I have a
9 general understanding that some of our
10 agreements with manufacturers involve some
11 data rights, where we would share purchase
12 history back with the manufacturer. I'm not
13 sure what exact information is included
14 there, at what level and for what
15 manufacturers.

16 Q. Okay. Have you ever been
17 involved in structuring those sort of
18 agreements which would outline the
19 information shared between McKesson and
20 manufacturers along those lines?

21 A. Personally, no.

22 Q. Okay. Do you know who does
23 that at McKesson?

24 A. I think it happens in several
25 different places for branded products. It's

1 probably a combination of that team that
2 leads -- reports up to Chris Al- -- I'm
3 sorry, to Chris Dimos.

4 Q. Okay.

5 A. And then probably for some
6 branded and generics it could be the teams
7 that report up to Chris Alverson.

8 Q. Okay. We had talked a little
9 earlier in general terms about the opioid
10 epidemic, and I wanted to talk more
11 specifically with you about that.

12 Do you have an awareness that
13 more than 350,000 people have died due to
14 opioid overdoses since 1999?

15 MS. HENN: Objection, lacks
16 foundation.

17 A. I don't know that I'm familiar
18 with that specific number.

19 BY MR. BOGLE:

20 Q. Okay. I'm going to hand you
21 what I'm marking as Exhibit 22, which is
22 1.2060. This is a public document, so no
23 Bates number.

24 (McKesson-Cavacini Deposition
25 Exhibit 22 marked.)

1 MR. BOGLE: Sorry. They tell
2 me to bring a certain number, so I'm
3 trying to comply.

4 MS. HENN: You can take that
5 back to Florida.

6 MR. BOGLE: I'm trying to
7 comply.

8 BY MR. BOGLE:

9 Q. Okay. Mr. Cavacini, what I
10 just handed you is titled Red Flags and
11 Warning Signs Ignored: Opioid Distribution
12 and Enforcement Concerns in West Virginia
13 prepared by the Energy and Commerce
14 Committee, Majority Staff, of the House of
15 Representatives in Congress.

16 Do you see that?

17 A. I do.

18 Q. Okay. And it's dated
19 December 19, 2018. Do you see that at the
20 bottom?

21 A. I do.

22 Q. Have you seen this report?

23 A. I don't believe I have, no.

24 Q. Okay. Is there any system at
25 McKesson for individuals like yourself,

1 high-ranking senior individuals, to receive
2 information related to opioid-related news as
3 it comes out?

4 A. Not a structured or formal
5 process that I'm aware of, no.

6 Q. Okay. I guess what I'm asking
7 is: Do you guys have any service that you
8 sign up for that flags new articles or
9 publications like this related to opioids
10 that are then sent up to senior management?

11 A. Not that I'm aware of.

12 Q. Okay. Let's go to page .5 of
13 this document. There's an executive summary
14 here on this page. The first line says: The
15 opioid epidemic is the worst drug crisis in
16 America's history. According to the Centers
17 for Disease Control and Prevention, more than
18 351,000 lives have been lost to opioid
19 overdoses since 1999, with no signs of
20 abating. Far more people die from the misuse
21 of opioids in the United States each year
22 than from road traffic accidents or violence.
23 Public health officials are alarmed that the
24 opioid problem has helped drive a decline in
25 U.S. life expectancy at a time frame when

1 life expectancy is improving in many places
2 around the world.

3 Do you see that?

4 A. I do.

5 Q. Okay. So let's handle these
6 sort of one by one. The stat of more than
7 350,000 people having died from drug opioid
8 overdoses since 1999, is that a statistic you
9 were aware of prior to today?

10 A. I don't know that I could have
11 quoted that number prior to seeing it here.

12 Q. How about that more people die
13 from opioids every year than traffic
14 accidents or violence, is that something you
15 were familiar with?

16 A. I don't believe I had heard
17 that statement before.

18 Q. How about that the opioid
19 epidemic has helped drive a decline in U.S.
20 life expectancy, is that something you were
21 aware of?

22 A. Again, I don't believe I had
23 heard that stated that way.

24 Q. Okay. But you are aware that,
25 for example, since 1999, there has been a

1 consistent increase in opioid deaths in this
2 country, right?

3 MS. HENN: Objection, lacks
4 foundation.

5 A. I'm not 100% sure of the exact
6 timeline of the studies I have seen, but I
7 have seen statistics that indicate opioid
8 abuse and deaths are rising.

9 BY MR. BOGLE:

10 Q. Okay. And have you taken a
11 look at any of the McKesson sales information
12 of opioids, for example, in the last eight to
13 ten years as to whether that number has been
14 going down, steady, increasing over time?

15 A. I haven't.

16 Q. Okay. Is that information that
17 McKesson collects to look at by anyone that
18 you're aware of?

19 MS. HENN: Objection to form.

20 A. I'm not sure. I haven't seen
21 our sales broken out and categorized that
22 way.

23 BY MR. BOGLE:

24 Q. Would it surprise you that as
25 the opioid epidemic has increased, progressed

1 over the last ten years, that so have
2 McKesson's sales of opioids in the United
3 States?

4 A. I think over the period of time
5 that I've been with the company, our total
6 sales and revenue has grown pretty
7 significantly, so I'm not aware of specific
8 categories, but, no, I don't know that I
9 would be surprised that our sales of all
10 products, over-the-counter, controlled
11 substances, have grown over the last 10 to
12 15 years of my career.

13 Q. Okay. Well, I'm going to hand
14 you what I've marked as Exhibit 23 to your
15 deposition, which is a chart that we've put
16 together -- oops, I think I may have handed
17 you -- did I hand you one of mine with the
18 writing on it? I did. Yeah, okay. If you
19 want that one.

20 (McKesson-Cavacini Deposition
21 Exhibit 23 marked.)

22 BY MR. BOGLE:

23 Q. So I put together a chart here
24 using the ARCOS data that we have in our
25 possession that charts out McKesson's sale

1 and shipments of opioids from 2006 to 2014 in
2 the United States, and that's what I've
3 handed you here, sir.

4 So, for example, if we look at
5 this -- and you see this first of all is
6 conveyed on the left-hand in thousands, these
7 numbers?

8 A. Okay.

9 Q. You see that?

10 A. I do see that.

11 Q. Okay. So, for example, it's
12 indicated in 2006 there are two -- there were
13 2 million thousands, which is the equivalent
14 of 2 billion, doses of opioids distributed in
15 the United States by McKesson. You see that?

16 MS. HENN: Objection, lacks
17 foundation.

18 A. I see where the chart says
19 that, yes.

20 BY MR. BOGLE:

21 Q. Okay. And if you follow the
22 chart up, for example, there is a steady
23 progression in shipments from 2006 to 2014,
24 isn't there?

25 MS. HENN: Objection to form.

1 BY MR. BOGLE:

2 Q. It continues to go up, doesn't
3 it?

4 MS. HENN: Lacks foundation.

5 A. Not equally. 2014 is higher
6 than the 2006 number on this chart. The
7 bar's taller.

8 BY MR. BOGLE:

9 Q. Right. For example, if you
10 look at eight years later in 2014, there are
11 nearly 3.5 billion dosage units distributed
12 by McKesson in the United States.

13 Do you see that?

14 MS. HENN: Objection, lacks
15 foundation.

16 A. It seems to be short of 3.5,
17 but the reference of the bar seems to be
18 close to the axis of 3.5.

19 BY MR. BOGLE:

20 Q. Okay. So based on your
21 testimony a minute ago, this doesn't surprise
22 you, though, does it, that the increase --
23 there's been a steady increase in the last
24 eight years from 2 billion to nearly
25 3.5 billion dosage units in the United States

1 for McKesson as it pertains to opioids.

2 That's not a surprising figure to you, is it?

3 MS. HENN: Objection, lacks
4 foundation.

5 A. No. I mean, I would have to
6 understand what was happening with our
7 customers and our mix and our total business
8 during this time, but, I mean, if that is
9 roughly a 50% increase, is that -- you know,
10 from two to three, I'm trying to think back.

11 I believe the company has more
12 than doubled during this same horizon in
13 total sales. So we've acquired new
14 customers. We've grown share. So I don't
15 know that this is surprising.

16 Q. Okay. So the notion that as
17 the epidemic has worsened and more and more
18 people have died from the opioid epidemic,
19 and that seems to correspond pretty well with
20 increased shipments of opioids by McKesson in
21 the United States, that doesn't concern you
22 at all?

23 MS. HENN: Objection to form,
24 lacks foundation.

25 A. I would need more information.

1 I don't know that I can make the connection,
2 and I'm trying to think back to big shifts
3 with customers and when we started our
4 relationship with the VA, for example, and
5 how that might have influenced this.

6 On the fact that for periods of
7 time it was relatively flat or maybe even
8 declining. But the fact that these sales in
9 certain categories are -- of products seem to
10 correlate to our overall growth, I don't know
11 that it's surprising. I --

12 BY MR. BOGLE:

13 Q. Well -- go ahead.

14 A. No.

15 Q. Has there ever been any
16 discussion that you've been privy to at
17 McKesson of capping the number of opioid
18 shipments made to the customers in this
19 country at a certain level every year?

20 MS. HENN: Objection to form.

21 A. That McKesson cap it?

22 BY MR. BOGLE:

23 Q. Uh-huh. Right. That you set a
24 certain quota at which you don't exceed under
25 any circumstances in a given year for

1 opioids. Has that ever been discussed?

2 A. My understanding is that the
3 DEA sets the quota for the number of products
4 that can be manufactured, and they adjust
5 that number each year. I don't recall that
6 I've ever been part of a conversation in
7 McKesson to set a quota or a cap.

8 Q. Yeah, so I'm not talking with
9 the DEA; I'm talking about McKesson. I'm
10 talking about are you aware of any discussion
11 within McKesson of saying, listen, we
12 understand the opioid epidemic is getting
13 worse and worse and worse out there. One way
14 that we can help that is to ship less
15 opioids, and we're going to set a cap on
16 ourselves to make sure in a given year we
17 don't ship over a certain number.

18 Are you aware of any
19 discussions like that?

20 MS. HENN: Objection to form.

21 A. I think about these products,
22 and these are, you know, FDA-approved
23 medications that provide a legitimate medical
24 purpose for patients that are in need, and
25 our job is to fill orders from pharmacies

1 that are theoretically pursuant to
2 prescriptions that were written by doctors
3 and presented in a pharmacy.

4 No, I've never been part of a
5 conversation around a cap and would be
6 concerned about the impact of patient care
7 and relationship between a doctor and a
8 patient and a pharmacist and a patient.

9 BY MR. BOGLE:

10 Q. Do you have any understanding
11 of whether there's even legitimate efficacy
12 as far as pain and pain reduction for
13 opioids?

14 MS. HENN: Objection.

15 BY MR. BOGLE:

16 Q. Have you ever seen any efficacy
17 profile of the drug?

18 MS. HENN: Objection to form,
19 lacks foundation.

20 A. I'm not a physician or a
21 pharmacist. Those are decisions that are
22 made between healthcare professionals.

23 BY MR. BOGLE:

24 Q. Right. And that's what --
25 you're talking about patient care and making

1 sure patients get what they need. I'm just
2 asking what you know about the efficacy of
3 the drug -- class of drugs.

4 A. My understanding is that these
5 are legitimate, legal, approved medications
6 and many patients, you know, benefit from
7 them.

8 Q. You understand that many
9 patients benefit from them? Where do you
10 have that knowledge?

11 A. I lost my father to lung cancer
12 when I was 19 years old and I watched the
13 pain he was in at end of life and how he was
14 treated, and I believe that these products
15 brought him comfort when he was suffering
16 deeply.

17 Q. Okay. Any other medical
18 knowledge that you have on the point?

19 A. No, I said clearly I'm not a
20 physician, I'm not a medical professional.

21 Q. Okay. And so the notion that
22 the -- there's been a steady increase of
23 opioid sales in the United States by McKesson
24 from 2006 to 2014, are you aware of any
25 discussions that maybe we want less blood on

1 our hands as far as people dying out there
2 from this epidemic?

3 MS. HENN: Objection --

4 BY MR. BOGLE:

5 Q. So maybe we're going to sell
6 less of this stuff?

7 MS. HENN: Objection to form,
8 lacks foundation.

9 BY MR. BOGLE:

10 Q. Are you aware of any discussion
11 along those lines?

12 MS. HENN: Same objections.

13 A. I'm not aware of any
14 discussions of where we have had discussions
15 around caps or limiting these products and
16 believe that those decisions should be made
17 between a medical professional and a patient.

18 BY MR. BOGLE:

19 Q. As to how much you ship?

20 A. As to how much is prescribed
21 and ultimately how much is ordered.

22 Q. Okay. But you -- McKesson --
23 when I say you, I don't mean you,
24 Mr. Cavacini. You, the McKesson Corporation,
25 can make decisions on how much of any product

1 they are willing to ship, right? That's
2 within the company's purview to decide,
3 right?

4 MS. HENN: Objection to form,
5 asked and answered.

6 A. But I think it is a balance
7 between making sure that these products are
8 available to patients who need them when they
9 need them, all the medications that we
10 provide.

11 You know, we are a distributor
12 and a logistics company that see orders from
13 pharmacies and pharmacists pursuant to
14 prescriptions. I don't think we should be
15 making clinical decisions. Under the --

16 BY MR. BOGLE:

17 Q. Well -- go ahead. Go ahead.
18 No.

19 A. Under the Controlled Substances
20 Act, we have a responsibility to make sure
21 that we have an effective program to guard
22 against controls and that we have a system to
23 alert orders that deviate in size, pattern
24 and frequency.

25 Q. Okay. And do you dispute that

1 McKesson has done a poor job over the last 10
2 to 15 years of ensuring it complies with the
3 Controlled Substances Act in that regard?

4 MS. HENN: Objection to form,
5 lacks foundation.

6 A. I don't agree that we've done a
7 poor job.

8 BY MR. BOGLE:

9 Q. Okay. Now, you're aware that
10 the state of Ohio specifically has been hit
11 hard by the opioid epidemic, right?

12 A. I'm aware of reports about the
13 impact on communities all over the country,
14 specifically parts of Ohio and West Virginia
15 and Kentucky and Tennessee where I used to
16 live, yes.

17 Q. And are you aware that the --
18 Ohio has ranked in the top ten in diversion
19 of opioids over time?

20 MS. HENN: Objection to form,
21 lacks foundation.

22 A. I don't believe I'm aware of
23 that statistic.

24 BY MR. BOGLE:

25 Q. I'm going to hand you what I'm

1 marking as Exhibit 24, which is 1.1434, and
2 that's MCKMDL00403517.

3 (McKesson-Cavacini Deposition
4 Exhibit 24 marked.)

5 THE WITNESS: It's stapled
6 funny.

7 MR. BOGLE: Yeah, I don't know
8 why they stapled it that way. Sorry.

9 BY MR. BOGLE:

10 Q. If you go to page -- I want to
11 look at this PowerPoint deck that's attached
12 to this e-mail, so if you go to page --

13 A. If I could just have a quick
14 second. I just want to read it.

15 Q. Yeah. Just let me know when
16 you're ready.

17 A. Okay. Thank you.

18 (Document review.)

19 A. Okay.

20 BY MR. BOGLE:

21 Q. Okay. So, actually, let's
22 start with the e-mail to introduce it first.
23 It's from Krista Peck, June 10, 2014 to a
24 group of individuals, subject being the 2014
25 NSC Regulatory Update to DC Ops.

1 Do you see that?

2 A. I do.

3 Q. Okay. And the first line in
4 the e-mail says: Attached is the Regulatory
5 presentation to the DC Ops team at National
6 Sales Conference (NSC) in May.

7 Do you see that?

8 A. I do.

9 Q. Is that typically a conference
10 that you would attend?

11 A. Our National Sales Conference,
12 I believe I've made every one.

13 Q. Okay. Do you recall this that
14 you've looked at -- I know you haven't looked
15 in grand detail, but at the presentation, do
16 you recall this presentation being made?

17 A. I don't. And I believe during
18 this time of '14, was I still in Memphis? I
19 was a VP/GM, I believe, so I had sales and
20 ops responsibility. The conference has
21 multiple breakout rooms and meetings going on
22 at the same time. I can't say for certain if
23 I saw this presentation or participated in
24 this part of the meeting.

25 Q. Okay. Well, if you look at

1 page .13 in this, in this document, you see
2 there's a slide that says Current Rx Drug
3 Diversion Trends.

4 Do you see that?

5 A. I do.

6 Q. Okay. And as of when this
7 chart was created here, for oxycodone, Ohio
8 is ranked number five on this list, right?

9 A. That's what the chart reflects,
10 yes.

11 Q. Ohio is number seven for
12 hydrocodone, right?

13 MS. HENN: Objection to form,
14 lacks foundation.

15 A. Ohio is listed seventh under
16 hydrocodone.

17 BY MR. BOGLE:

18 Q. Okay. And for hydromorphone,
19 number eight, right?

20 A. Yes.

21 Q. And for oxymorphone,
22 number seven for Ohio, right?

23 A. Also appears to be correct.

24 Q. Okay. Ohio being, at least as
25 of a few years ago, in the top ten in drug

1 diversion for oxycodone, hydrocodone,
2 hydromorphone, oxymorphone, that's something
3 you're aware of?

4 MS. HENN: Objection to form,
5 lacks foundation and mischaracterizes
6 the document.

7 A. I don't believe I had seen this
8 chart before referenced here in this way.

9 BY MR. BOGLE:

10 Q. Are you aware that in Ohio the
11 epidemic has reached a state where the state
12 of Ohio has had to purchase death trailers
13 for people who have suffered opioid overdoses
14 and deaths?

15 A. I believe I became aware of
16 that recently.

17 Q. Okay. How did you become aware
18 of that?

19 A. I was shown a document in prep
20 for today.

21 Q. Okay. So I'm going to hand you
22 what's marked as Exhibit 25 which is 1.1453,
23 no Bates number because it's a public
24 document.

25 A. Thank you.

1 (McKesson-Cavacini Deposition

2 Exhibit 25 marked.)

3 BY MR. BOGLE:

4 Q. Do you recognize this as the
5 document you've recently seen in preparation
6 for the deposition?

7 A. Appears to be, yes.

8 Q. Okay. And the document's from
9 an article dated March 14, 2017, and it's
10 titled Too Many Bodies in Ohio Morgue, so
11 Coroner Gets Death Trailer.

12 Do you see that?

13 A. Appears to be the title of the
14 article.

15 Q. Okay. Did you actually read
16 the article in its totality?

17 A. I believe I became familiar
18 with it. I don't believe I read every part
19 of the document, no.

20 Q. Okay. Well, you see on the
21 first page there's a trailer that says
22 Disaster Response, Ohio Department of Health.

23 Do you see that on the first
24 page there?

25 A. There's a picture of a trailer,

1 yes.

2 Q. And in the first paragraph in
3 the letter -- or in the article it says:
4 It's mute testimony to the opioid addiction
5 plague that has been ravaging Ohio - a
6 20-foot long air conditioned trailer with
7 room for 18 bodies.

8 Do you see that?

9 A. I do, yes.

10 Q. And then on page .4, looking at
11 the fourth sort of paragraph here where it
12 says: Coroners in the counties of.

13 Do you see that?

14 A. I do.

15 Q. It says: Coroners in the
16 counties of Ashtabula and Cuyahoga (which is
17 where Cleveland is located) have had to
18 deploy the trailers when their morgues became
19 too jammed, he said.

20 The medical examiner in Summit
21 County (where Akron is located) asked the
22 Ohio Health Department to send one over last
23 summer when there was a spike in drug
24 overdoses, the Akron Beacon Journal reported.

25 Do you see that?

1 A. I do.

2 Q. And then if you look down, the
3 next-to-the-last paragraph on that page says:
4 But the situation in rust belt states like
5 Ohio, where the drug overdose rate in 2015
6 (the most recent federal figures available)
7 was 29.9 per 100,000 people, is especially
8 dire.

9 Do you see that?

10 A. I do, yes.

11 Q. So when you read this, did this
12 cause you some concern?

13 A. How can you not feel concerned
14 and pain when you read about addiction and
15 the consequences of it.

16 Q. Well, in Ohio, for example --
17 and I showed you the chart for the United
18 States. Would it surprise you that the sale
19 of opioids in the state of Ohio for McKesson
20 has also consistently increased from 2006 to
21 2014?

22 MS. HENN: Objection to form,
23 lacks foundation.

24 A. I'm not familiar with the
25 specific trends in Ohio, but -- remind me of

1 the question again, I'm sorry. I was
2 distracted by the picture.

3 BY MR. BOGLE:

4 Q. It says -- I said: Would it
5 surprise you that the sales of opioids in the
6 state of Ohio for McKesson has also
7 consistently increased from 2006 to 2014?

8 MS. HENN: Same objection.

9 A. I mean, I'm not sure of our
10 overall business trends in Ohio during that
11 same period of time and what our customer mix
12 and relationship with pharmacies and
13 hospitals in Ohio has been.

14 BY MR. BOGLE:

15 Q. Okay.

16 A. I don't know.

17 (McKesson-Cavacini Deposition
18 Exhibit 26 marked.)

19 BY MR. BOGLE:

20 Q. I'm going to hand you what I'm
21 marking as Exhibit 26, which is another
22 summary chart put together from the ARCOS
23 data from the state of Ohio related to
24 McKesson shipments. Do you see it's titled
25 McKesson Shipments of Opioid Drugs in Ohio,

1 Total Dosage Units 2006 to 2014.

2 Do you see that?

3 A. I do, yes.

4 Q. Okay. You see again these
5 numbers are conveyed in thousands, so, for
6 example, in 2006, it's approximately
7 65-ish million doses to Ohio provided by
8 McKesson.

9 Do you see that?

10 MS. HENN: Objection to form,
11 lacks foundation.

12 A. I see where the blue bar that
13 correlates with 2006 is somewhere between 60
14 and 80, yeah.

15 BY MR. BOGLE:

16 Q. And by the time you get to
17 2014, that number is closer to 110 million.

18 Do you see that?

19 A. I do see that over the period
20 of time it increased and decreased and
21 leveled off, but from 2014 to 2016 --

22 Q. 2006 you mean?

23 A. I'm sorry, from 2014 to 2006,
24 yeah, there's an increase and the blue bar
25 correlates with roughly I guess what would be

1 a hundred million on this chart.

2 Q. Okay. And so from 65 to
3 100 million approximately from 2006 to 2014
4 for the state of Ohio for McKesson.

5 Do you see that?

6 MS. HENN: Objection, lacks
7 foundation.

8 A. That appears to what is
9 represented here? I have no -- I don't know
10 if this -- where this comes from. I know you
11 said it comes from the ARCOS data. I don't
12 know how to verify it or...

13 BY MR. BOGLE:

14 Q. Okay. Well, based on our
15 discussion from the United States data, would
16 it surprise you that this sort of increase
17 has occurred in that eight-year period?

18 MS. HENN: Objection, lacks
19 foundation.

20 A. I would like to understand how
21 it correlates to our overall business in Ohio
22 and population trends and prescriber
23 activities, our customer base.

24 But assuming that our business
25 in Ohio followed trends of our business

1 across the nation and that we grew over this
2 eight- to ten-year period, this alone isn't
3 surprising to me.

4 BY MR. BOGLE:

5 Q. Okay. So you agree it's
6 certainly not an irresponsible business model
7 to grow your business in all aspects outside
8 of opioids given the ongoing epidemic, right?

9 MS. HENN: Objection to form,
10 vague.

11 A. I don't know that I understand
12 the question.

13 BY MR. BOGLE:

14 Q. Do you believe it would be an
15 irresponsible business model for McKesson to
16 seek to grow its business in all areas except
17 for opioids, given the ongoing epidemic?

18 MS. HENN: Objection to form.

19 A. I don't -- I don't know that we
20 have influence over what's prescribed and
21 dispensed and decisions that are made by
22 medical practitioners. The relationships
23 that we have with our customers are around
24 their entire prescription pharmaceutical
25 medical needs. We don't carve out certain

1 categories of products.

2 BY MR. BOGLE:

3 Q. Would the concern be that if
4 you did, that business would go down
5 altogether?

6 MS. HENN: Objection to form.

7 A. I think our concern is that we
8 have a responsibility to make sure that we
9 provide a secure and safe and accurate and
10 efficient supply chain, so medications that
11 are needed by patients are available to the
12 pharmacies and hospital customers we have
13 when they're needed.

14 BY MR. BOGLE:

15 Q. Okay. But my question I think
16 went back to: Do you think it would be an
17 irresponsible business decision to seek to
18 grow your -- McKesson's business in all areas
19 except for in opioids, given the ongoing
20 epidemic?

21 MS. HENN: Objection to form,
22 asked and answered, vague.

23 A. I don't know that we can select
24 and make decisions around which classes of
25 medicine we're going to make available to

1 medical practitioners.

2 BY MR. BOGLE:

3 Q. Sure, you can. You can decide
4 not to distribute opioids at all, couldn't
5 you?

6 A. Yeah, and I guess I would be
7 concerned about the impact that that would
8 have on patients that have a legitimate need
9 as prescribed by their physician for these
10 medicines.

11 Q. But McKesson is fully capable
12 of making the decision to determine, number
13 one, how many opioids they distribute in a
14 period of time, true?

15 MS. HENN: Objection to form,
16 asked and answered.

17 A. I'm trying to think through our
18 relationships with our customers and the
19 agreements that we have with customers and
20 hospitals, and I'm not sure of our
21 obligations under those agreements around
22 what products.

23 We've always provided a breadth
24 of FDA-approved medicines that are required,
25 needed and ordered from our customers.

1 Q. So is it your understanding
2 that if you did not provide the opioids that
3 your pharmacy customers wanted, that somehow
4 you would be subject to some sort of legal
5 action?

6 MS. HENN: Objection to form,
7 calls for a legal conclusion.

8 A. I mean, I think our Controlled
9 Substance Monitoring Program allows us to
10 limit orders that deviate, but as far as
11 calling -- I don't know what hospital would
12 do business with us. I don't know how I
13 could service the VA and cancer centers and
14 teaching hospitals without being able to
15 provide all of the products that they need
16 and require and prescribe and dispense.

17 BY MR. BOGLE:

18 Q. So let me ask you this:
19 Looking at the Ohio data, we've talked about
20 the increase there. As far as an increase in
21 legitimate medical need that would justify
22 this sort of increase, can you point me to a
23 specific change in circumstances in the
24 United States that caused an increase in need
25 for opioids?

1 MS. HENN: Objection to form.

2 A. I don't know that I understand
3 the question. I'm sorry.

4 BY MR. BOGLE:

5 Q. Right.

6 Is there, in your view, any
7 increase in medical need, legitimate medical
8 need for opioids today versus in 2006?

9 MS. HENN: Objection to form.

10 A. I'm not a healthcare provider.
11 I'm not a physician. I think there are
12 people that are -- I think the demand and
13 this trend, if accurate and if represented
14 correctly, is more a factor of our customers
15 and who we service and, you know, how our
16 share probably moved.

17 BY MR. BOGLE:

18 Q. Do you have a sense that people
19 in the United States have a greater need for
20 opioids than anybody else in the country --
21 or anybody else in the world?

22 MS. HENN: Objection to form,
23 calls for speculation.

24 A. I'm not aware.

25 ///

1 BY MR. BOGLE:

2 Q. But you do know that almost all
3 the opioids utilized in the world are
4 utilized in the United States though, right?

5 MS. HENN: Objection, lacks
6 foundation.

7 A. Again, I don't know the
8 specifics. I've heard trends around
9 dispensing and prescribing patterns in the
10 U.S. relative to other markets.

11 BY MR. BOGLE:

12 Q. If we can go back to
13 Exhibit 1.2060. I don't have the
14 cross-reference number. It's the big
15 document I gave you the -- that one, the E&C
16 document.

17 MS. HENN: It's Exhibit 22.

18 MR. BOGLE: Exhibit 22, okay.

19 BY MR. BOGLE:

20 Q. All right. So I'm going to
21 page .22 here in this document. So this is
22 under section Origins of the Modern Opioid
23 Epidemic.

24 Do you see that?

25 A. I do.

1 Q. Okay. Second paragraph there
2 says: The dramatic growth in opioid
3 consumption is unique to the United States.
4 In a 2017 technical report, published in
5 accordance with Article 15 of the Single
6 Convention on Narcotic Drugs of 1961, the
7 International Narcotics Control Board wrote,
8 "In 2016, the country with the highest
9 consumption of hydrocodone continued to be
10 the United States, with 33.4 tons, equivalent
11 to 99.1% of total global consumption." The
12 report also noted "consumption of oxycodone
13 was concentrated in the United States (72.9%
14 of the world total)."

15 Do you see that?

16 A. I do see where that's stated in
17 the document.

18 Q. So based on these findings, is
19 it your understanding that only people in the
20 United States need opioids?

21 MS. HENN: Objection to form.

22 A. I don't know that I can say
23 with any certainty why these statistics are
24 listed the way they are.

25 ///

1 BY MR. BOGLE:

2 Q. Yeah. I'm just asking whether
3 it's your understanding that only people in
4 the United States have a legitimate medical
5 need for opioids.

6 MS. HENN: Objection to form.

7 A. I think the document says that
8 they're used in other parts of the world, 72%
9 is in the U.S., and why doctors prescribe the
10 way they do here and what happens, I don't --
11 I don't know.

12 BY MR. BOGLE:

13 Q. It's actually 99% for
14 hydrocodone. Do you see that?

15 A. I'm sorry, the 72.9 number is
16 the number that --

17 Q. Yeah, the prior -- sorry.

18 A. Prior?

19 Q. The prior sentence says: In
20 2016, the country with the highest
21 consumption --

22 A. I'm sorry, you're correct,
23 99.1%.

24 Q. So if there is such a
25 significant medical need for hydrocodone, for

1 example, in the United States, can you
2 explain why that significant medical need
3 doesn't exist in other developed countries in
4 the world?

5 A. No.

6 MS. HENN: Objection to form,
7 calls for speculation.

8 BY MR. BOGLE:

9 Q. I want to look at one more
10 thing here and then we can take a break.

11 But you don't dispute that
12 McKesson has great power to control the
13 downstream flow of opioids to pharmacy
14 customers around the country, do you?

15 A. I don't know that I agree.

16 Q. Okay. Do you know an
17 individual at McKesson name of Gary Boggs?

18 A. I do, yes.

19 Q. Okay. He's in your regulatory
20 department, right?

21 A. He is.

22 Q. He's also a pretty senior level
23 in the regulatory department as well, right?

24 MS. HENN: Objection to form.

25 A. I believe he's a vice president

1 of the regulatory department and has had
2 different roles, but I would call him a
3 senior member of our regulatory team.

4 BY MR. BOGLE:

5 Q. Okay. And I just want to mark
6 for you Exhibit 27 to your deposition, which
7 is 1.851, and that's MCKAGMS0060000880.

8 (McKesson-Cavacini Deposition
9 Exhibit 27 marked.)

10 BY MR. BOGLE:

11 Q. And Mr. Boggs has a background
12 at the DEA before he came on with your
13 company, right?

14 A. I believe he does, yes.

15 Q. If you see, this PowerPoint
16 deck is titled State of Prescription Drug
17 Abuse, Gary Boggs, Olive Branch.

18 Do you see that on the front
19 page?

20 A. I do.

21 Q. Okay. And if you go
22 specifically to page .37, it says here:
23 Distributors Have Great Power on this slide,
24 and the bottom bullet point there says -- or
25 actually says Individually and Collectively.

1 And the bottom bullet point below that says:
2 You control the supply to downstream
3 customers.

4 Do you see that?

5 A. I see the third bullet point
6 says that, yes.

7 Q. Okay. And that's just --
8 that's a statement of fact, right, that
9 McKesson, and, quite frankly, other
10 distributors, control the flow of products,
11 including opioids, to downstream customers,
12 right?

13 MS. HENN: Objection to form,
14 lacks foundation.

15 A. I don't know that I would
16 agree. I see that the document says that.

17 BY MR. BOGLE:

18 Q. Okay. You don't agree that
19 McKesson has control of the flow of opioids
20 it provides to its downstream customers?

21 A. I guess I'm just struggling
22 with the word control. I think we are part
23 of the supply chain and have a role to play
24 as such.

25 Q. And part of, quite frankly, a

1 broken supply chain, right?

2 A. No, I don't agree.

3 Q. You don't agree with that.

4 Well, let me -- before we go there, if you go
5 in this PowerPoint deck to page .46, there's
6 a slide that's titled What Else Impacts
7 Diversion?

8 Do you see that?

9 A. I do.

10 Q. The first bullet point there
11 says Compliance, with seven exclamation
12 points, right?

13 A. I do.

14 Q. And the bottom bullet point
15 below that says: Without sustained sources
16 of supply major diversion schemes wither
17 away.

18 Do you see that?

19 A. I do see where it says that.

20 Q. Okay. Do you have an opinion
21 as to whether that's an accurate statement?

22 MS. HENN: Objection, calls for
23 speculation.

24 A. I'm not an expert in diversion
25 and what drives it, how it comes to be. I do

1 think it's reasonable that if you have bad
2 actors that are intent on diverting, they
3 probably need access to product in order to
4 do it.

5 BY MR. BOGLE:

6 Q. Right.

7 And as far as product goes,
8 McKesson supplies, I think the website
9 currently says one out of every three pills
10 filled in the United States, right?

11 MS. HENN: Objection to form,
12 lacks foundation.

13 A. I think I've seen statistics,
14 and I have shared with great pride that we
15 are responsible for roughly a third of the
16 nation's medication supply.

17 BY MR. BOGLE:

18 Q. Right. So you've seen that
19 statistic before, right?

20 A. I have.

21 MR. BOGLE: All right. We can
22 take a quick break.

23 MS. HENN: Sure.

24 THE VIDEOGRAPHER: We're off
25 the record at 3:13 p.m. This

1 concludes Disc 3.

2 (Recess taken, 3:13 p.m. to
3 3:24 p.m.)

4 THE VIDEOGRAPHER: We're back
5 on the record at 3:24 p.m., beginning
6 of Disc 4.

7 BY MR. BOGLE:

8 Q. Mr. Cavacini, West Virginia is
9 another state that's been ravaged by the
10 opioid epidemic, right?

11 A. I'm aware of the issue in
12 West Virginia.

13 Q. Okay. And the issue being that
14 it's been extremely hard hit by the opioid
15 epidemic, right?

16 A. I've heard it described the
17 same way.

18 Q. And in 2018, there was actually
19 a congressional investigation into McKesson
20 and other distributors as to their conduct in
21 West Virginia as it related to opioid
22 distribution, right?

23 A. I believe there was an inquiry
24 and investigation that I'm aware.

25 Q. Right. And, for example, the

1 CEO of McKesson, Mr. Hammergren, actually was
2 called by Congress to testify in a hearing,
3 correct?

4 A. I am aware of the testimony.

5 Q. Okay. Have you read the
6 testimony?

7 A. I don't believe I've read the
8 whole transcript. I've seen the testimony on
9 C-SPAN.

10 Q. Okay. The whole -- all of his
11 testimony or just portions of it?

12 A. I believe I've seen the entire
13 testimony at one time, and then I've also
14 seen portions of it.

15 Q. Okay. Were you involved in any
16 way in assisting Mr. Hammergren to testify
17 before Congress?

18 A. No.

19 Q. Were you involved, for example,
20 in collecting any information for him to
21 testify?

22 A. No.

23 Q. I'm going to hand you what I'm
24 marking as Exhibit 28 to your deposition, and
25 that's 1.44, a public document, so no Bates

1 numbers.

2 (McKesson-Cavacini Deposition
3 Exhibit 28 marked.)

4 BY MR. BOGLE:

5 Q. Okay. And this is a letter
6 from the House of -- Congress of the United
7 States, House of Representatives, Committee
8 on Energy and Commerce from February 15,
9 2018.

10 Do you see that?

11 A. I do.

12 Q. And the letter is addressed to
13 McKesson's CEO, John Hammergren, right?

14 A. Agreed.

15 Q. Okay. And have you ever seen
16 this letter?

17 A. I believe I have, yes.

18 Q. As part of preparation or at
19 some time in your work at McKesson?

20 A. I believe I saw it during prep.

21 Q. Okay. Have you ever seen it as
22 part of your daily job at McKesson?

23 A. I don't believe so, no.

24 Q. Okay. And if you look at the
25 second paragraph here in this letter, it

1 says: As parts of our investigation, the
2 Committee wrote you -- to you on May 8, 2017,
3 regarding your distribution practices
4 generally, and in particular with respect to
5 West Virginia. As we mentioned in that
6 letter, the opioid epidemic has been
7 particularly devastating to West Virginia.
8 For example, in 2015, West Virginia had the
9 highest opioid overdose death rate in the
10 nation.

11 And then the last sentence in
12 that paragraph says: Court filings also
13 indicate that between 2007 and 2012, McKesson
14 distributed 46,179,600 doses of hydrocodone
15 and 54,304,980 doses of oxycodone, meaning
16 that McKesson shipped a total of 100,484,580
17 doses to West Virginia during this time
18 period.

19 Do you see that?

20 A. I do see that.

21 Q. Are you familiar with those
22 statistics as far as how much hydrocodone and
23 oxycodone McKesson distributed to
24 West Virginia during that five-year time
25 frame?

1 A. I mean, I see the statistics
2 listed here in the letter and I'm familiar
3 with the numbers now.

4 Q. Okay. But prior to your
5 preparation for deposition, had you seen any
6 numbers like that as it pertained to
7 West Virginia and the company's distribution
8 of hydrocodone and oxycodone?

9 A. I don't recall seeing any
10 statistics.

11 Q. All right. Let's go back to
12 Exhibit 22, which is the other congressional
13 publication we were looking at. All right.

14 Let's start on page .5. And
15 looking in the second paragraph of the
16 executive summary, the second sentence that
17 starts with "In early 2017."

18 Do you see where I'm at?

19 A. I believe I do.

20 Q. It says: In early 2017, the
21 Committee became interested in allegations of
22 "opioid-dumping," a term to describe
23 inordinate volumes of opioids shipped by
24 wholesale drug distributors to pharmacies
25 located in rural communities, such as those

1 in West Virginia.

2 And then in the next paragraph
3 it says: In May 2017, the Committee opened a
4 bipartisan investigation into the
5 allegations. From press reports and this
6 investigation, the Committee learned of
7 opioid shipments in West Virginia that
8 shocked the conscience.

9 And then there's three bullet
10 points noting some description of the
11 shipments.

12 Do you see that?

13 A. I do.

14 Q. First bullet point says: Over
15 10 years, 20.8 million opioids were shipped
16 to pharmacies in the town of Williamson, home
17 to approximately 3,000 people.

18 Do you see that?

19 A. I do, yes.

20 Q. You agree with me that just
21 common sense, that's an inordinate amount of
22 opioids for that size town?

23 MS. HENN: Objection to form.

24 A. I don't agree.

25 ///

1 BY MR. BOGLE:

2 Q. You don't agree? Okay.

3 The next bullet point says:

4 Another nearly 9 million opioids were
5 distributed in just two years to a single
6 pharmacy in Kermit, West Virginia, population
7 406.

8 Do you see that?

9 A. I do.

10 Q. Do you agree that that's an
11 inordinate amount of opioids to be delivered
12 in a two-year period given the size of that
13 city?

14 A. I don't know. And it's hard to
15 make determinations of, you know, where --
16 pharmacies' orders and markets and
17 prescribers. I don't know if it's inordinate
18 as you described or not.

19 Q. Okay. You certainly at your
20 time at McKesson have been, from a geographic
21 perspective, had responsibility for portions
22 of West Virginia, right, from a sales
23 perspective?

24 A. I was never a direct
25 salesperson in West Virginia, but during the

1 period of time that I had responsibility for
2 New Castle, the northwestern part of
3 West Virginia, and during the period of times
4 that I had responsibility for our Virginia
5 DC, other parts of West Virginia.

6 Q. During your time at McKesson,
7 did you ever develop an understanding of the
8 makeup population-wise of West Virginia?

9 A. No.

10 Q. Any concept that it's largely a
11 rural-based state as far as population goes?

12 MS. HENN: Objection to form.

13 A. I never sought out or
14 researched, but generally aware that parts of
15 West Virginia are considered rural.

16 BY MR. BOGLE:

17 Q. Okay. The third bullet point
18 going back to this says: Between 2007 and
19 2012, drug distributors shipped more than
20 780 million hydrocodone and oxycodone pills
21 to West Virginia.

22 Do you see that?

23 A. I do.

24 Q. So you hold the same view on
25 that, that you have no opinion as to whether

1 that five-year period of time, that's an
2 inordinate amount of opioids to this single
3 state?

4 A. I don't know if it is or it
5 isn't.

6 Q. You know McKesson was one of
7 the companies being investigated by Congress
8 as part of this proceeding, right?

9 If you don't know, maybe I can
10 just point you to the spot on here to move
11 things along.

12 A. Yeah, I believe that to be
13 true. I'm just trying to make sure I
14 absolutely know it to be true.

15 Q. Okay. If you look on page .5,
16 further down, I'm in the last paragraph in
17 the middle, where it says: The companies
18 whose distribution was reviewed.

19 A. Okay.

20 Q. You see it lists several
21 distributors, and McKesson's on that list,
22 right?

23 A. I mean, you described it as an
24 investigation. This says it was -- I'm
25 really not trying to be difficult. I just

1 don't know. I haven't read this whole
2 document. I don't know if it's described as
3 an investigation, an inquiry.

4 I understand that it says that
5 it was -- we were one of the companies that
6 was reviewed.

7 Q. Okay. Well, I think the
8 passage I just read to you a moment ago,
9 Congress describes it itself as an
10 investigation. For example, if you go back
11 to the third paragraph --

12 A. Opened a bipartisan
13 investigation into the allegations, and I
14 guess as a result of that, the companies
15 reviewed included McKesson.

16 Q. Right. So again, I'm only
17 asking you at this point: Do you understand,
18 do you see here that McKesson was one of the
19 companies reviewed as part of this
20 investigation, right?

21 A. It appears to be, yes.

22 Q. Okay. Were you not aware of
23 that prior to today, that there was an
24 investigation that had just been completed by
25 Congress last month and published regarding

1 McKesson and other distributors and their
2 conduct in West Virginia?

3 A. I guess, you know, there's --
4 I'm a little unclear on the letter from
5 earlier 2018, and I believe we referenced the
6 letter that was dated in 2017, if that's all
7 part of the same matter, if the energy
8 commerce -- but to answer your question, I
9 mean, I am aware now that it concluded on
10 December 19th and apparently this report was
11 issued.

12 Q. Right. But prior to starting
13 this deposition and me showing you this
14 today, this is something you were unaware of,
15 true?

16 A. I was aware of the inquiry
17 and -- if these are all related, I'm just not
18 clear on that, sir.

19 Q. Okay. But the findings in this
20 report from December 19, 2018 are findings
21 you are unfamiliar with prior to us talking
22 about it today, right?

23 A. I have not reviewed this
24 document in detail prior to us talking about
25 it today.

1 Q. Okay. Let's go to page .6
2 here. The first full paragraph says: This
3 report presents case studies of opioid
4 distribution to southwestern West Virginia
5 pharmacies over the last decade. The
6 findings from these individual case studies
7 are not necessarily generalizable of the
8 conduct of the distributors more broadly.
9 However, the case studies - taken together
10 with the sheer number of opioids sent to
11 these small towns - raise sufficient concerns
12 as to whether these companies fulfilled their
13 legal obligations to prevent drug diversion.

14 Do you see that?

15 A. I do see that.

16 Q. Did you understand that part of
17 the investigation -- I know you haven't seen
18 this publication, but did you understand that
19 part of this investigation by Congress would
20 include assessing whether distributors like
21 McKesson fulfilled their legal obligations to
22 prevent drug diversion in West Virginia?

23 MS. HENN: Object to form.

24 A. I don't know that I was aware
25 what the objectives of the committee's

1 investigation was prior to seeing it here.

2 BY MR. BOGLE:

3 Q. If the committee concluded that
4 there were widespread failures as it
5 pertained to preventing diversion of opioids
6 by McKesson and other distributors, would you
7 disagree with that finding from Congress?

8 MS. HENN: Objection to form,
9 calls for speculation.

10 A. I haven't reviewed the whole
11 document. I'm not sure what the conclusions
12 were. But I think I would -- if you could
13 repeat the last part of the question again.

14 BY MR. BOGLE:

15 Q. Right. If the committee as
16 part of this report concluded that there were
17 widespread failures to prevent diversion of
18 opioids by distributors, including McKesson,
19 would you disagree with those findings?

20 MS. HENN: Objection, calls for
21 speculation.

22 A. If those were the conclusions,
23 I would disagree.

24 BY MR. BOGLE:

25 Q. Okay. Give me just one second.

1 All right.

2 Let's go to page .26. You see
3 here it says: The Opioid Epidemic's Impact
4 in West Virginia.

5 Do you see that?

6 A. It's the opening sentence, yes.

7 Q. Yep. It says there: The
8 opioid epidemic's impact has been
9 particularly acute in West Virginia,
10 beginning with the influx of OxyContin to the
11 state during the late 1990s. The sudden
12 influx of prescription opioids, leading to
13 the resulting increases in abuse and
14 addiction, has had profound effects on
15 West Virginia. Between 1999 and 2004, the
16 number of lives lost to accidental drug
17 overdoses in West Virginia increased 550%,
18 giving West Virginia the highest
19 unintentional drug overdose death rate in the
20 United States at the time. A study published
21 in the Journal of the American Medical
22 Association in December 2008 found that, in
23 2006, 93% of unintentional overdose deaths
24 attributable to prescription drugs in
25 West Virginia involved opioids.

1 And the next paragraph
2 continues: In 1917, West Virginia continued
3 to have the highest overdose death rate in
4 the country, and a report issued by the
5 West Virginia Department of Health and Human
6 Services found that the number of overdose
7 deaths in the state increased by more than
8 316% between 2001 and 2016, with most
9 overdose deaths involving at least one
10 opioid.

11 You see that?

12 A. I do.

13 Q. Those statistics, you're
14 familiar with any of those prior to today?

15 MS. HENN: Objection to form,
16 lacks foundation.

17 A. I don't believe I had seen the
18 specific statistics relative to West Virginia
19 as outlined here.

20 BY MR. BOGLE:

21 Q. Okay. So this time frame here
22 that's being discussed, and specifically
23 talking about 2006 to 2016, as the deaths are
24 increasing from opioid overdoses in
25 West Virginia, do you have an understanding

1 of what was happening as far as the amount of
2 opioids that were being supplied from
3 McKesson to West Virginia?

4 A. I just want to be clear. It
5 says from 2001 to -- there's a bunch of dates
6 in the different paragraphs that we read.

7 Q. Yeah.

8 A. I thought you said 2006, but
9 2001 to 2016, do I know McKesson shipments?

10 Q. Yeah. So anytime during the
11 time frame -- let's do that time frame. I'll
12 strike the previous question.

13 From 2001 to 2016, do you have
14 any sense as to what was happening with
15 McKesson's shipment of opioids to
16 West Virginia as far as whether they're going
17 up, down or staying the same?

18 A. I do not, no.

19 Q. Okay. Well, if we go to
20 page .242 -- 242. You see there's two charts
21 here towards the middle of the page? You see
22 those?

23 A. I do.

24 Q. Okay. The sentence before
25 those charts describes them. It says: The

1 chart below details the number of suspicious
2 order reports submitted to DEA regarding
3 West Virginia pharmacies as well as the
4 amount of oxycodone and hydrocodone doses
5 shipped to the state each year.

6 Do you see that?

7 A. I do.

8 Q. Okay. And if you look, for
9 example, at the number of doses that McKesson
10 shipped in millions of oxycodone and
11 hydrocodone in 2006, was at 17.07 million
12 doses.

13 Do you see that?

14 MS. HENN: Objection to form,
15 lacks foundation.

16 A. I do see where the document
17 says under 2006, 17.07.

18 BY MR. BOGLE:

19 Q. Okay. If you go -- and you see
20 there, the numbers here, there's a citation
21 923 at the end of that sentence.

22 Do you see that?

23 A. I do.

24 Q. Okay. If you go down to the
25 bottom of the page, it indicates that this

1 shipment data came from McKesson, right? See
2 that last sentence under 923?

3 A. It says: McKesson produced
4 shipment data from 2006 to the end of 2016.

5 Q. Right. Which is -- coincides
6 with the chart we're looking at here, right,
7 time period-wise?

8 A. It appears to, yes.

9 Q. Okay. And, for example, you go
10 to 2007, there's 25.63 million doses of
11 oxycodone and hydrocodone shipped to
12 West Virginia from McKesson.

13 You see that figure?

14 A. I do.

15 Q. And then if we kind of go on
16 through, by the time we get to 2015, we're at
17 40.71 million doses of hydrocodone and
18 oxycodone shipped by McKesson into
19 West Virginia in that year.

20 Do you see that figure?

21 A. I do.

22 Q. And in 2016, 36.53 million
23 doses in that year shipped by McKesson.

24 Do you see that?

25 A. I do.

1 Q. So in looking at these figures,
2 we can agree that looking at 2006-2007 time
3 frame, the numbers substantially increase
4 when compared to 2015 and 2016, right?

5 MS. HENN: Objection to form,
6 lacks foundation.

7 A. The numbers here from 2006 to
8 '16 approximately doubled.

9 BY MR. BOGLE:

10 Q. Right.
11 And so based on your prior
12 testimony, I would assume you attribute that
13 to just more business for McKesson, right?

14 A. I don't know how to attribute
15 it.

16 Q. Okay. Do those numbers concern
17 you at all that in the state of West Virginia
18 that's the amount of pills that were shipped
19 of oxycodone and hydrocodone in 2015 and
20 2016, especially compared to what happened in
21 2006 and 2007?

22 MS. HENN: Objection to form.

23 A. Again, without the context
24 relative to our overall business in
25 West Virginia and the customers we served, I

1 don't know that I can answer that. I mean, I
2 think there's more context needed around --
3 BY MR. BOGLE:

4 Q. Okay. Are you aware of any
5 specific medical needs in West Virginia that
6 differed in 2015 and 2016 for opioids as
7 compared to 2007, for example?

8 MS. HENN: Objection to form,
9 calls for speculation.

10 A. I'm not a healthcare
11 professional, but, you know, during this
12 period of time, I mean, just as one example,
13 we began servicing the VA. I don't know the
14 VA's concentration. You know, I don't -- I
15 don't know if that was a drive or not.

16 There could be a number of
17 things going on here. I just don't know.

18 BY MR. BOGLE:

19 Q. And one of those things could
20 be that you guys are just shipping a lot more
21 pills to West Virginia, right, and in
22 circumstances where there was not proper due
23 diligence done around those shipments, right?

24 MS. HENN: Objection to form.

25 ///

1 BY MR. BOGLE:

2 Q. Can you rule out that
3 possibility?

4 MS. HENN: Lacks foundation.
5 Go ahead.

6 A. I don't agree with the context
7 of the question.

8 BY MR. BOGLE:

9 Q. Okay. So you've ruled that out
10 as a possibility, am I understanding you
11 right?

12 MS. HENN: Objection to form,
13 vague.

14 A. I believe we have exercised and
15 put great effort into exercising our
16 responsibilities under the Controlled
17 Substances Act.

18 BY MR. BOGLE:

19 Q. Okay. Great effort, okay.
20 Let's go to page .106. In
21 the -- there's the third paragraph there,
22 "The scope of the Committee's review."

23 Do you see that?

24 A. I do.

25 Q. It says: The scope of the

1 Committee's review of the distributors'
2 conduct was limited. The investigation
3 focused only on distributors' shipments to
4 certain areas of West Virginia and individual
5 pharmacies located in those rural regions.
6 Accordingly, much of this section is
7 comprised of the case studies.

8 While the Committee cannot draw
9 comprehensive, nationwide conclusions from
10 this review, the findings are astonishing
11 and concerning. They also raise questions
12 about the effectiveness of distributors'
13 anti-diversion efforts outside West Virginia,
14 as the same policies were implemented across
15 the country.

16 Do you see that?

17 A. I do, yes.

18 Q. And policies being implemented
19 across the country, for example, with
20 McKesson, the CSMP was implemented across the
21 entire country, right, one single policy?

22 A. I believe we implemented our
23 controlled substance policy nationwide. I
24 believe there were different policies.

25 Q. Meaning different policies for

1 different regions of the country?

2 A. No, different policies at
3 different points in time. The program
4 evolved and different policies for different
5 segments of customers. You had said there
6 was one policy. I just wanted to be clear,
7 I'm not sure that there was "one" policy.

8 Q. Okay. So to the extent that
9 Congress is questioning McKesson's
10 anti-diversion efforts, both inside
11 West Virginia and across the nation, you
12 would think that those concerns are
13 unfounded? Am I understanding you right
14 based on your prior testimony?

15 MS. HENN: Objection to form,
16 calls for speculation.

17 A. I don't -- I don't know that
18 I'm in a position to speculate on the
19 conclusion that Congress made or wrote in
20 this summary.

21 BY MR. BOGLE:

22 Q. Do you think Congress has any
23 good reason to be concerned about McKesson's
24 anti-diversion policies while you've been
25 with the company?

1 MS. HENN: Objection, calls for
2 speculation.

3 A. I think we have a program that
4 we're committed to and have continued to
5 evolve and, I believe, is best in class today
6 and will continue to be supported and vested
7 so it stays that way.

8 MR. BOGLE: Okay. Move to
9 strike as nonresponsive.

10 BY MR. BOGLE:

11 Q. My question was simply: Do you
12 think Congress has good reason to be
13 concerned about McKesson's anti-diversion
14 policies while you've been with the company?

15 MS. HENN: Objection to form,
16 asked and answered.

17 A. I'm not sure. I think we have
18 a program that we're committed to enforcing
19 and upholding our responsibilities under the
20 Controlled Substances Act.

21 BY MR. BOGLE:

22 Q. You're speaking as of today,
23 right?

24 A. As of today, and I believe we
25 always had a program that we thought was

1 structured appropriately to meet our needs
2 and our customers' needs and the needs of the
3 supply chain and exercise our
4 responsibilities to distribute controlled
5 substances.

6 Q. So if Congress has any concerns
7 about McKesson's anti-diversion policies over
8 time, to my question previously, you would
9 think those were unfounded, right?

10 MS. HENN: Objection to form,
11 calls for speculation.

12 A. I don't know that I'm in a
13 position to say what conclusions Congress
14 should or shouldn't make.

15 BY MR. BOGLE:

16 Q. Okay. As COO of the company at
17 McKesson, you don't have an opinion, one way
18 or the other, as to whether there should be
19 concerns about McKesson's anti-diversion
20 practices since you've been with the company?

21 A. I believe we've always worked
22 hard to exercise our responsibility and will
23 continue to do so and have done so.

24 Q. I wasn't asking how hard you
25 worked. I'm asking if there's concern -- if

1 you think there's good reason to be concerned
2 about McKesson's anti-diversion practices
3 while you've been with the company.

4 MS. HENN: Objection, form,
5 asked and answered.

6 BY MR. BOGLE:

7 Q. I'm not asking you about
8 effort. I'm asking you about execution.

9 MS. HENN: Same objection.

10 A. No, I don't believe there's
11 reason to be concerned.

12 BY MR. BOGLE:

13 Q. Okay. Let's take a look at one
14 of the pharmacies that was investigated here
15 as far as McKesson. Let's go to .131.
16 There's a section (i) there, McKesson's
17 Initial Engagement with Family Discount
18 Pharmacy.

19 Do you see that?

20 A. I do.

21 Q. Have you ever heard of Family
22 Discount Pharmacy?

23 A. I believe I have relating to
24 these letters and the investigation
25 referenced here.

1 Q. Had you heard of them prior to
2 reading these letters?

3 A. I don't believe I had.

4 Q. It says here: Family Discount
5 Pharmacy in Mount Gay-Shamrock,
6 West Virginia, was McKesson's biggest
7 purchaser of hydrocodone and oxycodone in
8 West Virginia between 2006 and 2017.
9 McKesson supplied Family Discount Pharmacy
10 with more than 5.91 million doses of
11 hydrocodone and oxycodone during six years
12 between 2006 and 2014. Between 2006 and 2007
13 alone, McKesson provided Family Discount
14 Pharmacy with more than 3.82 million doses of
15 hydrocodone. As will be described below,
16 McKesson terminated this pharmacy prior to
17 2008 for "compliance reasons" but elected to
18 onboard the customer again two times
19 thereafter.

20 Do you see those references?

21 A. I do.

22 Q. Okay. Let's go to page .136.
23 You see there's a finding at the top here --
24 this is again related to Family Discount
25 Pharmacy -- that says: McKesson did not

1 consider its prior relationship with Family
2 Discount Pharmacy when evaluating the
3 pharmacy's new customer application in 2010,
4 with a member of McKesson's regulatory
5 affairs division at one point stating, "I
6 cannot see any reason we should be hesitant"
7 with respect to the pharmacy.

8 Do you see that?

9 A. I do see where that's listed
10 and highlighted in blue.

11 Q. Okay. And then what's
12 discussed below that are two e-mails from
13 McKesson sales staff. So I want to take a
14 look at those and ask you about those
15 e-mails.

16 It says: The e-mails provided
17 by McKesson suggest that the company viewed
18 itself as being in competition with other
19 distributors to obtain Family Discount's
20 account. For example, in an e-mail to a
21 McKesson Vice President and General Manager
22 referencing a pricing proposal for Family
23 Discount Pharmacy, a member of McKesson's
24 sales division noted the pharmacy had a,
25 quote/unquote, very aggressive buy plan with

1 Cardinal. I would approve this based on
2 where we have to be to have an opportunity.

3 Do you see that?

4 A. I do see that.

5 Q. Okay. And if there are
6 concerns about a pharmacy potentially being
7 engaged in diversion, you would agree that a
8 desire to beat out another distributor for
9 their business should not override concerns
10 about that diversion, should it?

11 MS. HENN: Objection, lacks
12 foundation.

13 A. I think those are two
14 independent decisions, and our regulatory
15 affairs team would make the decision about
16 the legitimacy of the pharmacy and their
17 ability to support purchases and have
18 effective controls and, you know, the sales
19 team would be concerned with the competitive
20 nature of the dynamics.

21 BY MR. BOGLE:

22 Q. Right. The sales team's
23 worried about winning new business and
24 getting bigger bonuses, right?

25 MS. HENN: Objection to form,

1 lacks foundation, calls for
2 speculation.

3 A. I think the sales team has been
4 focused and should be focused on helping find
5 customers that align with how McKesson sees
6 the market and that we can provide valuable
7 services to and build a long-term successful
8 relationship with.

9 And our regulatory affairs team
10 is responsible with making sure that we make
11 good decisions around the customers that we
12 serve and exercise our responsibility under
13 the Controlled Substances Act.

14 BY MR. BOGLE:

15 Q. You think Family Discount
16 Pharmacy was a pharmacy that was aligned with
17 McKesson's goals as it pertains to either of
18 those?

19 MS. HENN: Objection to form,
20 calls for speculation, lacks
21 foundation.

22 A. I don't know. I'm not familiar
23 with the account or the history.

24 BY MR. BOGLE:

25 Q. Okay. In the text that

1 continues below these e-mails, it says: In
2 another e-mail, a member of McKesson's sales
3 division said that he was sure either
4 H.D. Smith or Cardinal Health would offer to
5 be Family Discount's secondary distributor if
6 McKesson were to, quote/unquote, win Family
7 Discount's business.

8 Do you see that?

9 A. I do.

10 Q. Okay. Is that -- in your mind,
11 should be the goal of the sales staff is to
12 be worried about just winning business at all
13 costs?

14 MS. HENN: Objection, lacks
15 foundation, mischaracterizes the
16 document.

17 A. This is one sentence out of an
18 e-mail, and I don't read it that way. It
19 said that another competitor would also be
20 willing to service this customer in a
21 secondary relationship if we were to win the
22 account. I don't know what that means.

23 BY MR. BOGLE:

24 Q. Okay. Well, getting a new
25 account, certainly in 2010, would have

1 resulted in the sales rep winning him or
2 herself, right, as far as a bonus goes,
3 wouldn't it?

4 MS. HENN: Objection to form,
5 lacks foundation, calls for
6 speculation.

7 A. Yeah, I mean, as we reviewed
8 earlier, we have a sales incentive plan that
9 rewards retail sales managers for winning new
10 business. I don't know if this account would
11 have qualified. I don't...

12 BY MR. BOGLE:

13 Q. Okay. Let's go to the next
14 page, .137. The first full paragraph says:
15 According to documents produced to the
16 Committee, McKesson onboarded Family Discount
17 and set the pharmacy's hydrocodone ordering
18 threshold at 155,000 dosage units a month - a
19 level 31 times more than what McKesson
20 determined warranted supplementary
21 documentation on its new questionnaire --
22 customer questionnaire.

23 Do you see that?

24 A. I do see where it says that.

25 Q. Okay. You've seen enough

1 customer onboardings and documentation
2 related thereto to know that a threshold set
3 at 155,000 dosage units a month for
4 hydrocodone is high, very high, right?

5 A. It states here that -- I don't
6 know how it relates to other pharmacies and
7 if it would be high or not for this specific
8 pharmacy.

9 Q. Okay. If we can go to
10 page .140, we're now into 2012, some
11 additional e-mails, again, referring to
12 Family Discount Pharmacy.

13 In the first line under the
14 e-mail it says: In a separate e-mail, a
15 member of McKesson's sales division
16 characterized the pharmacy as a,
17 quote/unquote, real opportunity and requested
18 that the scheduling of the visit be
19 expedited. This e-mail is reproduced below.

20 So the visit being a visit
21 to -- you visit customers when you onboard
22 them, right, as a new customer?

23 A. I'm aware that, you know,
24 customers will be visited often by a member
25 of the regulatory affairs team when coming

1 onboard.

2 Q. And per the discussion here,
3 the sales member at McKesson asked for that
4 to be expedited as it pertained to Family
5 Discount Pharmacy in 2012, right?

6 A. Again, I see where it states
7 that, and I see the e-mail where it says:
8 Please expedite, thanks.

9 Q. All right. I'm just making
10 sure you're done with your answer. I didn't
11 want to launch into another question.

12 A. Yeah, I was.

13 Q. Okay. Let's go finally on this
14 point to page .142. First -- the second
15 paragraph there says: As noted above, during
16 McKesson's three engagements with Family
17 Discount Pharmacy, it supplied more than
18 5.91 million doses of hydrocodone and
19 oxycodone, making the pharmacy McKesson's
20 biggest customer in West Virginia between
21 2006 and 2017. Had McKesson maintained
22 robust due diligence files for Family
23 Discount Pharmacy and consulted these files
24 when it was considering the pharmacy's
25 applications in 2010 and 2012, it would have

1 been aware that it terminated the pharmacy
2 for compliance reasons on at least one prior
3 occasion. In addition, conducting a
4 retrospective review of the due diligence
5 files would have also alerted McKesson to the
6 pharmacy's failure to disclose its previous
7 termination by McKesson on its 2010 and 2012
8 new customer applications, with the pharmacy
9 seemingly providing the company with a
10 misrepresentation on its 2010 application in
11 particular. Such information may have
12 prompted McKesson to deny Family Discount's
13 applications on multiple occasions. Instead,
14 McKesson accepted Family Discount as a
15 customer a total of at least three times,
16 only to ultimately restrict its ability to
17 purchase controlled substances again in 2014.

18 Do you see that?

19 A. I do.

20 Q. And so when these new customer
21 onboardings would have been done in 2010 and
22 2012, those are both prior to the change in
23 policy within McKesson about sales incentives
24 not including opioid sales, right?

25 MS. HENN: Objection to form,

1 lacks foundation.

2 A. I believe we've covered the
3 2013 plan where controlled substances were
4 excluded. 2010 and 2012 are before that.

5 BY MR. BOGLE:

6 Q. All right. Let's go to
7 page .244. I want to look at the second full
8 paragraph there on that page, where it says:
9 McKesson did not report suspicious orders for
10 West Virginia customers until 2013. Since it
11 began doing so, the company submitted upwards
12 of 10,000 suspicious order reports to the
13 DEA. By not reporting suspicious orders when
14 they were discovered, McKesson failed to meet
15 its responsibilities under the CSA. In
16 addition, the failure to report suspicious
17 orders deprived the DEA of timely information
18 that could have alerted the agency to
19 potential controlled substance diversion,
20 which the agency could have used to act
21 against registrants that were illegally
22 diverting controlled substances.

23 You see that?

24 A. I do see that.

25 Q. Were you aware that McKesson

1 wasn't even reporting suspicious orders in
2 West Virginia until 2013?

3 MS. HENN: Objection to form,
4 lacks foundation.

5 A. I'm not aware of whether we
6 were or whether we weren't prior or after
7 2013.

8 BY MR. BOGLE:

9 Q. Okay. And the concept of
10 failing to report suspicious orders depriving
11 the DEA of the ability to investigate, you
12 agree with that concept, right? If you don't
13 report a suspicious order, you don't put the
14 DEA on notice of anything to potentially
15 investigate, right?

16 MS. HENN: Objection to form,
17 lacks foundation and calls for
18 speculation.

19 A. I don't know that I agree. I
20 believe we were reporting our ARCOS data that
21 you referenced earlier that some of your
22 statistics came from, and the DEA would have
23 had access to that as well.

24 BY MR. BOGLE:

25 Q. Okay. So you think simply by

1 reporting the transactions that occurred,
2 that was sufficient to meet your obligations
3 under the Controlled Substances Act?

4 MS. HENN: Objection to form,
5 mischaracterizes the testimony.

6 A. No, our responsibility under
7 the act I think I've stated, to identify and
8 report suspicious orders.

9 BY MR. BOGLE:

10 Q. Okay. And if that wasn't done
11 in West Virginia until 2013, what Congress is
12 saying is accurate, that you didn't meet your
13 obligations under the CSA, right?

14 MS. HENN: Objection to form,
15 lacks foundation.

16 A. I don't know if it's accurate
17 or not. I see what was written here in the
18 document that you read to me.

19 BY MR. BOGLE:

20 Q. Okay. But if that's true, if
21 what Congress is saying here is true, that
22 McKesson in West Virginia didn't report
23 suspicious orders until 2013, that up until
24 that time, do you agree or disagree with
25 Congress's other conclusion that that means

1 that McKesson failed to meet its
2 responsibilities under the Controlled
3 Substances Act?

4 MS. HENN: Objection to form,
5 lacks foundation and calls for a legal
6 conclusion.

7 A. I'm not aware of whether the
8 orders were identified as suspicious or not
9 prior to or after our reporting about those
10 orders. I think...

11 BY MR. BOGLE:

12 Q. Yeah. I think my question is
13 different.

14 I'm asking you if the -- if
15 Congress is correct, that McKesson did not
16 report suspicious orders for West Virginia
17 customers until 2013, would the failure to do
18 so prior to 2013 be a failure to meet its
19 obligations under the Controlled Substances
20 Act?

21 MS. HENN: Same objections.
22 Objection to form, lacks foundation
23 and calls for a legal conclusion.

24 Also, asked and answered.

25 A. I'm not a lawyer. I don't know

1 that I'm in a position to determine how to
2 answer that question.

3 BY MR. BOGLE:

4 Q. Okay. I thought we talked
5 about earlier that you understood McKesson's
6 responsibilities as far back to the letter at
7 least in, I think, 2006 we looked at, as
8 including the responsibility to report
9 suspicious orders. If that was not your
10 testimony, let me know.

11 A. I don't remember the specific
12 question or the testimony, but our
13 responsibility under the act is to have an
14 effective program that identifies orders that
15 deviate in pattern, size and frequency, and
16 to have an effective program that guards
17 against diversion. That's my understanding.

18 Q. Okay. Which includes reporting
19 suspicious orders when detected, right?

20 A. I believe we also have a
21 responsibility to report the orders when
22 detected.

23 Q. Okay. And the last thing I
24 want to look at here is .321. And I'm in the
25 third paragraph, the third sentence, where it

1 says, "While distributors' policies."

2 Do you see that sentence?

3 A. I do.

4 Q. It says: While distributors'
5 policies have evolved over time and were
6 strengthened in reaction to DEA enforcement
7 actions, the Committee's investigation
8 identified a variety of breakdowns dating
9 back to 2006 through the present day.

10 Do you see that?

11 A. I do see that.

12 Q. Okay. Do you agree or disagree
13 that from 2006 through the present day,
14 McKesson has experienced breakdowns in its
15 due diligence related to opioids?

16 MS. HENN: Objection to form,
17 lacks foundation.

18 A. I'm not sure I would
19 characterize them the way you had. I am
20 aware that we had accepted responsibility for
21 failing to report some orders for some
22 customers during specific periods of time.

23 BY MR. BOGLE:

24 Q. And that's outlined in the 2017
25 settlement agreement, right?

1 A. I believe so, yes.

2 Q. Which have you also read that
3 agreement?

4 A. I've reviewed parts of the
5 agreement. I can't say that I've read the
6 entire document.

7 Q. Okay. Have you reviewed parts
8 of that agreement as part of your employment
9 at McKesson or in preparation for deposition
10 or both?

11 A. I remember reviewing it as part
12 of the prep for this discussion today.

13 Q. Did you ever read the 2017
14 agreement or any parts of it as part of your
15 just day-to-day work at McKesson?

16 A. I had received summaries of the
17 document --

18 MS. HENN: I'm just going to
19 object that if you're starting to talk
20 about things you heard from lawyers,
21 you shouldn't do that, but go ahead
22 and if you could repeat the question.

23 BY MR. BOGLE:

24 Q. Yeah, let me rephrase my
25 question because I don't think I'm asking

1 that at all.

2 I'm just asking whether, as
3 part of your day-to-day work at McKesson, you
4 ever personally read any portion off the 2017
5 settlement agreement. I don't want to know
6 what anybody told you. I want to know if you
7 read it.

8 A. I don't -- I can't say that I
9 pulled out the document and read the
10 document, but as part of my role and
11 responsibilities, I had received summaries
12 and our responsibilities under that
13 settlement.

14 Q. Did you ever ask to see the
15 whole agreement as part of your job
16 responsibilities at McKesson?

17 A. No, I don't recall that I did.

18 Q. Okay. I'm going to mark
19 Exhibit 29 for you, which is 1.88. Also,
20 it's MCKMDL00355350.

21 (McKesson-Cavacini Deposition
22 Exhibit 29 marked.)

23 BY MR. BOGLE:

24 Q. All right. So this is, first
25 of all, the top of the first page states

1 Administrative Memorandum of Agreement.

2 Do you see that?

3 A. I do, yes.

4 Q. And if you go to the last page,
5 there are signatures, January 5th, 2017 by
6 Mark Walchirk at McKesson, and then also
7 signatures from members of DEA.

8 Do you see that on the last
9 page?

10 A. I do, yes.

11 Q. And Mark Walchirk, as noted
12 here, at that time was president of
13 U.S. Pharma at McKesson, right?

14 A. Correct.

15 Q. Okay. So I want to look at a
16 couple of aspects of this settlement
17 agreement here in 2017.

18 If you go first to page .2.
19 You see there under number 7 it says: On or
20 about November 14, 2014, McKesson received a
21 letter (dated November 4, 2014) from the DEA
22 Office of Chief Counsel, Diversion Regulatory
23 and Litigation Section, stating that DEA was
24 separately pursuing administrative action
25 against McKesson-Aurora for the conduct

1 outlined in the August 13, 2014 letter.

2 DEA also stated that the
3 allegations regarding McKesson's failure to
4 maintain effective controls against diversion
5 of particular controlled substances -- and it
6 cites to 21 U.S.C. 823(b)(1) -- and failure
7 to design and operate a system to disclose to
8 the registrant suspicious orders of
9 controlled substances -- and it cites to
10 21 CFR 1301.74(b) -- was national in scope,
11 and that DEA was also pursuing administrative
12 investigations of such alleged failures at
13 McKesson -- and it lists multiple
14 distribution centers at McKesson, right?

15 A. It does, yes.

16 Q. Okay. Now, have you ever
17 reviewed any of these letters that are
18 outlined here in this paragraph?

19 A. I would like to see the letters
20 to make sure I have. I'm not sure what the
21 November 14, 2014 letter is.

22 Q. Okay. Well, let me ask you
23 this: Do you recall ever seeing any
24 documentation from DEA stating to McKesson
25 that it believed its due diligence failures

1 as it pertained to monitoring of controlled
2 substances was national in scope?

3 MS. HENN: Objection to form,
4 lacks foundation.

5 A. I don't recall.

6 BY MR. BOGLE:

7 Q. Okay. Well, you would agree
8 with me that what's outlined here concerns of
9 the DEA outlined about --

10 MS. HENN: I think your finger
11 is in the shot.

12 MR. BOGLE: Oh. Sorry.

13 BY MR. BOGLE:

14 Q. You would agree with me that
15 the concerns outlined here about due
16 diligence failures that were national in
17 scope are serious and concerning, though,
18 right?

19 A. I would take all allegations
20 from the DEA as serious.

21 Q. Okay. Including these, right,
22 especially when it talks about national
23 failures, right?

24 MS. HENN: Objection to form,
25 lacks foundation.

1 A. I take them seriously.

2 BY MR. BOGLE:

3 Q. I'm sorry?

4 A. I take them seriously.

5 Q. Okay. Let's go to .3. You see
6 under number 2, you referenced this a little
7 bit earlier, is the acceptance of
8 responsibility provision.

9 Do you see that?

10 A. I do.

11 Q. Okay. It says there: On or
12 about September 27, 2006, February 7, 2007,
13 and December 27, 2007, DEA's Deputy Assistant
14 Administrator, Office of Diversion Control,
15 sent letters to every entity in the United
16 States that was registered with DEA to
17 manufacture or distribute controlled
18 substances, including McKesson.

19 And it references the DEA
20 letters.

21 The DEA letters contained,
22 among other things, guidance for the
23 identification and reporting of suspicious
24 orders to DEA -- and it references the CFR.

25 Then it says: McKesson

1 acknowledges that, at various times during
2 the time period -- during the period from
3 January 1, 2009 up through and including the
4 effective date of this agreement (the Covered
5 Time Period), it did not identify or report
6 to DEA certain orders placed by certain
7 pharmacies which should have been detected by
8 McKesson as suspicious based on the guidance
9 contained in the DEA letters about the
10 requirements set forth in -- and then it
11 lists the CFR and U.S.C.

12 Do you see that?

13 A. I do.

14 Q. This is the acceptance of
15 responsibility provision that you were
16 talking to me about a few minutes ago, right?

17 A. I believe so, yes.

18 Q. Okay. And we looked at the
19 execution or effective date of this agreement
20 is in January 2017, right? You see that on
21 the last page, right? Do you see that on the
22 last page?

23 A. Yeah. It was signed in January
24 of --

25 Q. Executed. Yeah.

1 So the acceptance of
2 responsibility for the failure to identify
3 and report suspicious orders over an
4 eight-year time frame, that's very
5 significant, isn't it?

6 MS. HENN: Objection to form,
7 mischaracterizing the document, lacks
8 foundation.

9 A. I don't know, but I think we
10 take our obligations under the Controlled
11 Substances Act and under this memorandum of
12 agreement very seriously.

13 BY MR. BOGLE:

14 Q. The obligation -- once this
15 agreement was executed, is that what you're
16 referring to?

17 A. No, I think I said under the
18 Controlled Substances Act.

19 Q. Okay. Do you think that this
20 acceptance of responsibility that I just read
21 is consistent with a company who's taken
22 these responsibilities seriously?

23 MS. HENN: Objection to form,
24 the prior question had misstated the
25 contents of the document.

1 A. I'm not aware of all the
2 specifics that went into reaching this
3 settlement with the DEA, and I think it
4 states clearly that at various times during
5 the period we accepted responsibility because
6 we did not identify or report certain orders
7 placed by certain pharmacies which should
8 have been detected by McKesson.

9 BY MR. BOGLE:

10 Q. Okay. And this is now the
11 second settlement agreement we've seen.
12 There's also one in 2008 we looked at earlier
13 today.

14 Do you recall that?

15 A. I do.

16 Q. Okay. And so do you think that
17 the entering into two separate settlement
18 agreements nine years apart for essentially
19 the same exact conduct is consistent with a
20 company that takes their due diligence
21 responsibility seriously?

22 MS. HENN: Objection to form,
23 lacks foundation, mischaracterizes the
24 settlements.

25 A. I think we do have and have

1 always taken our responsibilities seriously.

2 BY MR. BOGLE:

3 Q. Okay. Well, do you dispute
4 that McKesson had a widespread failure to
5 investigate and report suspicious orders from
6 2009 to 2017?

7 A. I wouldn't agree with that. I
8 think we acknowledged that for certain
9 pharmacies during a certain period of time.

10 Q. But a very substantial fine was
11 paid this time around in 2017, right, even
12 for a company like McKesson?

13 A. I believe we paid a substantial
14 fine.

15 Q. \$150 million, right?

16 A. That's the number I remember,
17 yes.

18 Q. Okay. And I'll ask you kind of
19 like I asked you before: Can you name for
20 our jury any instance since you've been at
21 the company that McKesson has paid a fine
22 even approaching \$150 million for something
23 the company believed it did not do?

24 MS. HENN: Objection to form,
25 calls for speculation.

1 A. I wasn't involved in the
2 decision-making leading up to this
3 settlement. It says here: In order to avoid
4 the uncertainty and expense of litigation,
5 and in furtherance of the parties' belief
6 that a settlement is in the public interest.

7 MR. BOGLE: Yeah, move to
8 strike as nonresponsive.

9 BY MR. BOGLE:

10 Q. I'm just asking, in the time
11 you've been at the company, can you name for
12 us a specific instance where McKesson has
13 paid anything approaching a \$150 million fine
14 for something that it didn't do? I'm just
15 looking for one example.

16 MS. HENN: Objection to form,
17 calls for speculation.

18 A. I'm not -- I'm not aware of our
19 teams that come to those decisions. I'm not
20 part of those teams that come to those
21 decisions or why -- what might influence our
22 decisions to enter into a settlement or not.

23 BY MR. BOGLE:

24 Q. You think you guys shouldn't
25 have settled in 2017? You should have fought

1 it?

2 A. Again, I don't know what
3 discussions took place between the company
4 and the DEA leading up to this settlement. I
5 believe the company made a decision that he
6 felt was in its best interest and the DEA
7 agreed that it was in the best interest of
8 the public to settle.

9 Q. So, yeah. I'm just asking
10 whether at your time at McKesson it was your
11 personal opinion that this should not have
12 been settled the way it was in 2017,
13 especially with this acceptance of
14 responsibility we just read?

15 MS. HENN: Objection to form.

16 A. I don't know and I don't have
17 enough information to draw a conclusion.

18 BY MR. BOGLE:

19 Q. Okay. On this same page,
20 bottom of .3, carrying over to .4, it lists a
21 total of 12 McKesson distribution centers
22 covered by this agreement as having failed to
23 maintain effective controls against
24 diversion.

25 Do you see that?

1 MS. HENN: Objection to form,
2 mischaracterizing the document.

3 A. I do see where the 12
4 pharmacies are listed, and I'm unclear if
5 this is the allegations against the company.

6 BY MR. BOGLE:

7 Q. You say 12 pharmacies. These
8 are all distribution centers.

9 A. I'm sorry, 12 distribution
10 centers. I'm sorry, you are correct, 12
11 distribution centers.

12 Q. Okay. Let me look at one last
13 thing here and I think I'm done. Page .4
14 now. In letter (c) it says: McKesson failed
15 to follow the procedures and policies set
16 forth in the McKesson CSMP to detect and
17 disclose suspicious orders of controlled
18 substances. Among other things, McKesson
19 failed to conduct adequate due diligence of
20 its customers, failed to keep complete and
21 accurate records in the CSMP files maintained
22 for many of its customers, and bypassed
23 suspicious order reporting procedures set
24 forth in the McKesson CSMP.

25 Do you see that?

1 A. I do see where it says that.

2 Q. Do you think that conduct I
3 just read in this paragraph here is
4 consistent with a company that undertook
5 great efforts to minimize diversion of
6 opioids?

7 MS. HENN: Objection to form.

8 Objection to form, lacks foundation.

9 A. Again, it's my understanding
10 that these were parts of the allocations made
11 by the DEA, but what we accepted
12 responsibility for was clearly outlined here.

13 BY MR. BOGLE:

14 Q. Okay. I'm asking -- this
15 document was ultimately signed by Mark
16 Walchirk, right?

17 A. It appears to be, yes.

18 Q. What I just read to you in
19 letter (c), do you believe that that's
20 consistent -- that conduct is consistent with
21 a company who takes great effort in
22 minimizing diversion?

23 MS. HENN: Objection to form,
24 lacks foundation.

25 A. I don't know if that statement

1 is true or not. I believe it was an
2 allegation against the company that we agreed
3 and accepted responsibility for something
4 very different.

5 BY MR. BOGLE:

6 Q. Oh, you think that McKesson
7 accepted responsibility for something very
8 different than what I just read in letter
9 (c)?

10 A. McKesson accepted
11 responsibility for failing to report certain
12 orders for certain customers.

13 Q. Yeah. I'm asking if in letter
14 (c), that you think that's substantially
15 different than what McKesson accepted
16 responsibility for.

17 A. I'm not a lawyer, but there are
18 components of (c) that aren't listed in the
19 acceptance of responsibility section.

20 Q. Okay. So when Mark Walchirk,
21 president of U.S. Pharma, signed this, he's
22 signing something that contained a bunch of
23 allegations that you think are completely
24 unfounded, right?

25 A. I don't know, but that's not my

1 understanding of what we accepted
2 responsibility for.

3 Q. Well, I'm asking, though: Do
4 you think that this agreement should have
5 been signed by anyone at McKesson that
6 contains the language that's read in letter
7 (c)?

8 MS. HENN: Objection to form.

9 A. I don't know that I'm in a
10 position to second-guess the decisions of
11 Mark and our teams that decided to enter into
12 this agreement with the DEA. I think what
13 I'm focused on now is making sure that we
14 meet our obligations under it and continue to
15 exercise our responsibilities appropriately
16 and to the satisfaction of supply chain
17 stakeholders and the DEA.

18 BY MR. BOGLE:

19 Q. How about satisfaction of the
20 patients who might be impacted by these
21 drugs?

22 A. I think I have a balanced and
23 shared responsibility to make sure that
24 these -- all medications, prescription and
25 otherwise, are available to patients when

1 they need them so they can pick them up at
2 their pharmacy and use them as prescribed,
3 while maintaining effective controls to
4 prevent them from getting in the hands that
5 have -- of people that might have less than
6 good intentions with them.

7 Q. But you would agree the most
8 important responsibility that you have as COO
9 of McKesson at this point in time is making
10 sure that what's outlined in the 2008 and
11 2000 [sic] settlement agreements as far as
12 the failures and due diligence of McKesson
13 don't continue within the company, true?

14 MS. HENN: Objection to form,
15 lacks foundation and mischaracterizes
16 the document.

17 A. I disagree with the framing of
18 the question.

19 BY MR. BOGLE:

20 Q. We reviewed both agreements.
21 Do you think that your obligations as it
22 stands today are to make sure that the things
23 like that are outlined in those two
24 agreements don't occur again?

25 MS. HENN: Same objections,

1 lacks foundation.

2 A. I think one of my
3 responsibilities, along with our regulatory
4 teams, is to make sure that we continue to
5 evolve our program, respond to changing
6 dynamics and trends in the market and have
7 the most effective program to execute our --
8 execute our responsibilities and guard
9 against diversion. And we're committing to
10 doing it.

11 BY MR. BOGLE:

12 Q. To make sure that things like
13 the allegations we read in the 2008 and 2017
14 settlement agreement do not occur again,
15 right?

16 MS. HENN: Objection, lacks
17 foundation.

18 A. I don't know that the
19 allegations happened or not, but, yeah, I
20 would like to have the best program that
21 nobody could question so there aren't
22 allegations again.

23 BY MR. BOGLE:

24 Q. Right. These were all very
25 serious allegations that all resulted in

1 substantial settlements, right?

2 A. I believe I take the
3 allegations seriously and they were
4 substantial settlements and we responded
5 appropriately.

6 Q. You say you responded
7 appropriately. In the 2017 settlement
8 agreement, it's noted that, in fact, starting
9 in 2009, immediately after the 2008
10 settlement agreement, that you guys didn't
11 react appropriately, right?

12 MS. HENN: Objection --

13 BY MR. BOGLE:

14 Q. Can you take away the
15 acceptance of responsibility paragraph as
16 meaning anything other than that?

17 MS. HENN: Objection to form.

18 A. I focus on paragraph 2 that
19 says: McKesson has taken steps to prevent
20 such conduct from occurring in the future,
21 including the measures delineated in the
22 Compliance Addendum.

23 BY MR. BOGLE:

24 Q. Oh, so after this agreement was
25 entered in 2017, right?

1 MS. HENN: Objection to form,
2 mischaracterizing the testimony.

3 A. I think we have taken steps
4 during our entire time with my time with the
5 company to evolve our program.

6 BY MR. BOGLE:

7 Q. But the failures and due
8 diligence that McKesson accepted
9 responsibility for began within months after
10 the settlement agreement was executed in
11 2008. True or not true?

12 MS. HENN: Objection to form,
13 lacks foundation and mischaracterizes
14 the document.

15 A. The time period outlined here
16 starts in January 1, 2009.

17 MR. BOGLE: Okay. I don't have
18 anything further at this time.

19 MS. HENN: I think we'll want
20 to go off the record.

21 THE VIDEOGRAPHER: Okay. We're
22 off the record at 4:31 p.m.

23 (Recess taken, 4:31 p.m. to
24 4:43 p.m.)

25 THE VIDEOGRAPHER: We're back

1 on the record at 4:43 p.m.

2 EXAMINATION

3 BY MS. HENN:

4 Q. Good afternoon, Mr. Cavacini.

5 A. Good afternoon.

6 Q. Mr. Cavacini, what's your
7 current title at McKesson?

8 A. Senior vice president and chief
9 operating officer for our U.S. pharmaceutical
10 business.

11 Q. And when did you take on the
12 role of senior vice president and chief
13 operating officer?

14 A. Roughly August of 2017.

15 Q. Prior to taking on your current
16 role, how long did you work for McKesson?

17 A. I've been with the company a
18 little over 17 years. Just celebrated my
19 17th anniversary, I believe.

20 Q. Let's talk about your
21 background. First, where did you go to
22 college?

23 A. I graduated from a small
24 liberal arts school outside of Philadelphia
25 called Ursinus College.

1 Q. When did you graduate from
2 Ursinus College?

3 A. 1993.

4 Q. After graduating from college
5 what was your first job?

6 A. My first job out of school was
7 selling Yellow Pages advertising.

8 Q. How long did you work in your
9 job selling Yellow Pages advertising?

10 A. I believe about three years,
11 maybe a little less.

12 Q. After you stopped working in
13 the Yellow Pages advertising position, what
14 job did you take after that?

15 A. I actually went to go work for
16 a customer that I met through my employment
17 at the Yellow Pages that owned a mail order
18 diabetes pharmacy called Advantage Health
19 Services.

20 Q. How did you come to join
21 McKesson in 2002?

22 A. Advantage was actually a
23 customer of McKesson at different periods of
24 time. The company was sold roughly halfway
25 through my tenure to Sun Healthcare. I

1 stayed for a number of years. Unfortunately,
2 that company actually went through a Chapter
3 11 bankruptcy and at that point in time I
4 began looking for opportunities. I was
5 familiar with McKesson and came to McKesson
6 in 2002.

7 Q. What was your position when you
8 joined McKesson?

9 A. My first role was a retail
10 sales executive.

11 Q. What were your responsibilities
12 as a retail sales executive?

13 A. The primary responsibilities of
14 a retail sale executive were business
15 development, trying to work with non-McKesson
16 customers to understand their needs and see
17 if there was a fit with McKesson.

18 Q. How did you identify potential
19 customers when you were working as a retail
20 sales executive?

21 A. I think through a variety of
22 sources, back to that time. Believe it or
23 not, the Yellow Pages was one of them that we
24 used, but there were also lists of
25 pharmacies. I remember the Hayes Directory

1 being a list of pharmacies. A lot of my time
2 was spent in New York City where in that
3 market you can literally just park your car
4 and walk and find pharmacies.

5 Q. How long did you serve as a
6 retail sales executive at McKesson?

7 A. I believe about four years.

8 Q. And your next position I think
9 you testified earlier was as a district sales
10 manager?

11 A. Correct, a district sales
12 manager for our Delran distribution center.

13 Q. What were your responsibilities
14 as a district sales manager?

15 A. I was a frontline sales
16 manager, leading a team of, you know, seven
17 to probably 15 retail sales managers at
18 different periods of time that maintained the
19 relationships that we had with our existing
20 McKesson distribution customers.

21 Q. And what territory did you
22 cover as a district sales manager?

23 A. It changed a little bit during
24 my tenure there. I initially started with
25 just the Delran distribution center, which

1 would have been the eastern half of
2 Pennsylvania, New Jersey, New York City, a
3 little bit of Maryland and Delaware, and was
4 later expanded to our New Castle distribution
5 in addition, which would have been the
6 western half of Pennsylvania, eastern Ohio, a
7 little bit of West Virginia.

8 Q. What was your next position at
9 McKesson after you served as a retail sales
10 manager?

11 A. I was promoted to a vice
12 president of sales for the same markets.

13 Q. And how long did you have that
14 position?

15 A. A little over three years, I
16 believe.

17 Q. What was your next position at
18 McKesson?

19 A. I was promoted again to vice
20 president and general manager for our
21 facility in Memphis, Tennessee, so I had
22 sales and operations responsibility for the
23 markets served by that distribution center.
24 Made a move from New Jersey at the time to
25 Collierville, Tennessee.

1 Q. And what was your next position
2 at McKesson?

3 A. I believe about three years
4 later had a chance to go back to the
5 northeast region and lead our northeast
6 region operations as the senior vice
7 president for that market.

8 Q. And that was your position
9 before you assumed your current position; is
10 that correct?

11 A. Correct, up until August of
12 '17.

13 Q. Mr. Cavacini, how would you
14 describe your level of familiarity with the
15 sales team's operations at McKesson's
16 U.S. Pharma division?

17 A. I think I have a pretty deep
18 understanding. For the better part of my
19 17-year career, I've been part of that team
20 in one fashion or another, as an individual
21 contributor and sales manager and now leader
22 of an organization.

23 Q. Based on your experience, how
24 would you describe the goal of the sales team
25 at McKesson in relation to prospective

1 customers?

2 MR. BOGLE: Object to form.

3 A. I've heard it described and
4 I've described it to my teams that we want to
5 have long-term customers that value the
6 services and solutions we provide. For the
7 better part of my career, our health system's
8 partners, as well as our retail independent
9 customers, have been under intense pressure,
10 reimbursement pressure. Clinical therapies
11 have become more complex. They're constantly
12 being asked to do more.

13 And we talk about the customers
14 choose us not only for the value and the
15 services we provide today, but because we
16 share a common vision for the future of
17 pharmacy. And I think that is what we're
18 trying to pursue.

19 BY MS. HENN:

20 Q. And again, based on your
21 experience, how would you describe the goal
22 of the sales team at McKesson in relation to
23 existing customers?

24 MR. BOGLE: Object to form.

25 A. I think it's to build mutually

1 beneficial and rewarding relationships. I
2 spoke earlier about our ICARE shared
3 principle "C," and that is customer centered
4 where we think about our business through our
5 customers' eyes and try to make sure that,
6 where we can, we're aligned around where
7 healthcare is going and how we can perform
8 our part to serve the pharmacies that are our
9 customers as well as the communities they
10 serve and that we live in and work out.

11 BY MS. HENN:

12 Q. Based on your experience over
13 your 17 years at McKesson, describe the
14 typical relationship between a retail sales
15 manager and a customer.

16 MR. BOGLE: Object to form.

17 A. I do think it varies, but my
18 experience has been that more often than not,
19 that that is a deep relationship. In many of
20 our -- the business relationships that we
21 have with our customers, we are probably
22 their largest vendor and have significant
23 impact on their business and their abilities
24 to perform for their communities.

25 One of the things that I'm most

1 proud of, if you walk into one of our
2 distribution centers, not only will you see
3 ICARE, but you will see a slogan that "It's
4 not a package, it's a patient."

5 We hammer home to our
6 associates in the DC, as well as our sales
7 teams, that at the end of every one of our
8 processes is a patient; somebody's mother,
9 child, that's in need and waiting for the
10 medications we provide. And we take that
11 responsibility very seriously in working with
12 our customers.

13 We've also had customers come
14 into our distribution center to share that
15 same message and the impact that we have on
16 their businesses and their communities.

17 BY MS. HENN:

18 Q. How does the sales team
19 interact with the regulatory affairs team at
20 McKesson?

21 MR. BOGLE: Object to form.

22 A. In a variety of ways. I mean,
23 I've heard it described and I've described it
24 myself that our sales team is an important
25 part of our Controlled Substance Monitoring

1 Program, been described as our first line of
2 defense. They spend the most time with our
3 customers.

4 And our new customer
5 onboarding, they're working with the customer
6 to complete the questionnaire. The customer
7 fills out that questionnaire and signs it,
8 hopefully in presence of the sales rep, and
9 the sales rep is making observations about
10 what he sees -- he or she sees and observes
11 relative to what's being represented by the
12 customer on the questionnaire.

13 That's shared with our
14 regulatory affairs team who has the ultimate
15 decision. I mean, they are supportive and
16 collaborative, but independent.

17 BY MS. HENN:

18 Q. What, if any, training do
19 sales -- does the sales team receive in the
20 area of controlled substances monitoring?

21 MR. BOGLE: Object to form as
22 to time.

23 A. During my career I've been a
24 part of and witnessed, you know, several
25 different sales trainings. As part of our

1 National Sales Conference, on a number of
2 years we've had annual refreshers for our
3 sales teams around the controlled substance
4 monitoring, our responsibilities under it.

5 As part of our new hire
6 orientation, when new associates join the
7 company, they go through a training and
8 onboarding process which includes education
9 and review on our CSMP and their
10 responsibilities.

11 BY MS. HENN:

12 Q. Could you describe McKesson's
13 culture in the area of controlled substances
14 monitoring compliance?

15 MR. BOGLE: Object to form.

16 A. I would say diligent. We take
17 our responsibilities very seriously. We have
18 worked and invested significantly to try to
19 develop the best program that we can have to
20 execute our responsibilities.

21 I spoke earlier about the
22 commitment that we have to all our customers
23 and that we communicate to our associates
24 that the license that we have is critical to
25 our business in order to meet the full

1 pharmaceutical needs of the customers we
2 serve, and I would rather make hard decisions
3 around individual customers than potentially
4 risk my relationship with, you know, all the
5 other ones, including major health systems
6 and trauma centers and our government and DOD
7 business. We try to be as diligent as we
8 can.

9 MS. HENN: I have no further
10 questions.

11 Would you like to go off the
12 record and switch?

13 MR. BOGLE: Let's go off the
14 record just a second and let me think
15 for like 30 seconds.

16 THE VIDEOGRAPHER: We're off
17 the record at 4:54 p.m.

18 (Recess taken, 4:54 p.m. to
19 4:55 p.m.)

20 THE VIDEOGRAPHER: Back on the
21 record at 4:55 p.m.

22 EXAMINATION

23 BY MR. BOGLE:

24 Q. Mr. Cavacini, just to follow up
25 on one point here: You just talked about

1 McKesson's culture as it pertains to
2 controlled substance monitoring. I think one
3 of the things you said was you take it very
4 seriously, right?

5 A. I believe we do, yeah.

6 Q. Okay. And I think throughout
7 the deposition today you've taken the
8 position that you think the company has
9 committed no wrongdoing as it pertains to due
10 diligence with opioids, right?

11 MS. HENN: Objection to form.

12 A. I think I acknowledged as part
13 of the settlement that we did accept
14 responsibilities for certain customers and
15 certain orders.

16 BY MR. BOGLE:

17 Q. Okay. The fact of the matter
18 is, you've, quite frankly, got more than
19 a million reasons at this point to support
20 this company, right?

21 MS. HENN: Objection to form,
22 vague.

23 A. I don't know that I understand
24 the question.

25 ///

1 BY MR. BOGLE:

2 Q. Okay. Well, you currently, in
3 2019, for example, are set to make more than
4 [REDACTED] total compensation,
5 right?

6 MS. HENN: Objection to form,
7 lacks foundation.

8 A. I don't know that to be true.

9 BY MR. BOGLE:

10 Q. Okay. Does the company provide
11 you with your compensation information going
12 into each fiscal year?

13 A. It does.

14 Q. Okay. Let me hand you what I'm
15 marking as Exhibit 30. It's 1.2136, and
16 that's MCKMDL00695848.

17 (McKesson-Cavacini Deposition
18 Exhibit 30 marked.)

19 BY MR. BOGLE:

20 Q. And what we see here is, on the
21 first page, a letter from May 31, 2018
22 referenced to Eugene G. Cavacini.

23 That's you, correct?

24 A. That's me, yes.

25 Q. Okay. And I'll tell you this

1 was provided to us by McKesson as part of
2 your personnel file.

3 If you go to the second page
4 here, you see there cash compensation and
5 long-term compensation listed for you for
6 2018 actuals and your targets for 2019 fiscal
7 year.

8 Do you see that?

9 A. I do.

10 Q. Okay. And, for example, in
11 2018, your actual -- your total target
12 compensation was [REDACTED] right?

13 A. That was the target
14 compensation.

15 Q. All right. And in the fiscal
16 year 2019, the target compensation is
17 [REDACTED] right?

18 A. Yes.

19 Q. And quite simply, that's a lot
20 of money, isn't it?

21 MS. HENN: Objection to form.

22 A. I feel grateful for the
23 opportunity I have.

24 BY MR. BOGLE:

25 Q. Okay. Because that's very

1 generously rewarding you from a compensation
2 perspective, isn't it?

3 MS. HENN: Same objection.

4 A. I'm humbled by the opportunity
5 I have. I'm grateful for what the company
6 has given me and hopefully what I've returned
7 to them.

8
9 MR. BOGLE: Okay. No further
10 questions.

11 MS. HENN: Before we go off the
12 record, I would just like to ask that
13 the -- pursuant to the protective
14 order, the transcript and all exhibits
15 be designated highly confidential
16 pending review and designation.

17 And I would also ask that the
18 witness have the opportunity to read
19 and sign.

20 MR. RALEY: Cardinal will
21 reserve its questions for the time of
22 hearing or trial.

23 THE VIDEOGRAPHER: Anyone on
24 the phone? Off the record?

25 MS. HENN: Thanks.

1 THE VIDEOGRAPHER: We're off
2 the record at 4:59 p.m. This
3 concludes Disc 4.

4 (Proceedings recessed at
5 4:59 p.m.)

6 --o0o--

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, MICHAEL E. MILLER, Fellow of the Academy of Professional Reporters, Registered Diplomate Reporter, Certified Realtime Reporter, Certified Court Reporter and Notary Public, do hereby certify that prior to the commencement of the examination, EUGENE G. CAVACINI was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that pursuant to FRCP Rule 30, signature of the witness was requested by the witness or other party before the conclusion of the deposition.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

MICHAEL E. MILLER, FAPR, RDR, CRR
Fellow of the Academy of Professional Reporters
NCRA Registered Diplomate Reporter
NCRA Certified Realtime Reporter
Certified Court Reporter

Notary Public in and for the
State of Texas
My Commission Expires: 7/9/2020

Dated: January 29, 2019

1 INSTRUCTIONS TO WITNESS

2
3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the
6 appropriate space on the errata sheet for any
7 corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it.

10 You are signing same subject to
11 the changes you have noted on the errata
12 sheet, which will be attached to your
13 deposition.

14 It is imperative that you return
15 the original errata sheet to the deposing
16 attorney within thirty (30) days of receipt
17 of the deposition transcript by you. If you
18 fail to do so, the deposition transcript may
19 be deemed to be accurate and may be used in
20 court.

1	ERRATA		
2	PAGE	LINE	CHANGE
3	_____	_____	_____
4		REASON:	_____
5	_____	_____	_____
6		REASON:	_____
7	_____	_____	_____
8		REASON:	_____
9	_____	_____	_____
10		REASON:	_____
11	_____	_____	_____
12		REASON:	_____
13	_____	_____	_____
14		REASON:	_____
15	_____	_____	_____
16		REASON:	_____
17	_____	_____	_____
18		REASON:	_____
19	_____	_____	_____
20		REASON:	_____
21	_____	_____	_____
22		REASON:	_____
23	_____	_____	_____
24		REASON:	_____
25			

1 ACKNOWLEDGMENT OF DEPONENT

2
3 I, EUGENE G. CAVACINI, do hereby
4 certify that I have read the foregoing pages
5 and that the same is a correct transcription
6 of the answers given by me to the questions
7 therein propounded, except for the
8 corrections or changes in form or substance,
9 if any, noted in the attached
10 Errata Sheet.
11

12 _____
13 EUGENE G. CAVACINI

DATE

14 Subscribed and sworn to before me this
15 _____ day of _____, 20 ____.

16 My commission expires: _____
17

18 _____
19 Notary Public
20
21
22
23
24
25

1	LAWYER'S NOTES		
2			
3	PAGE	LINE	
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____
25			